

A.

Finance Commission

This page left blank intentionally.



FINANCE COMMISSION OF TEXAS

MEETING DATEApril 21, 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 DATESJune 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.

This page left blank intentionally.

FINANCE COMMISSION AGENDA

Friday, April 21, 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 item A1 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 February 17, 2023, 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 Second Quarter Investment Officer Reports

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

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

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

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

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

E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Appointment of New Grant Advisory Committee Member Raechel Peters

F. 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 on the Finance Commission Agencies' Fiscal Year 2023 Mid-Term Accomplishment Reports

7. Discussion of the Condition of the Texas State Banking System Report (*Note: Report provided separately*)
8. 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
9. 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
10. 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
11. 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
12. Discussion of Matters Made Confidential by Law Pursuant to § 551.0811, Texas Government Code, Including Information Relating to the Financial Condition or Business Affairs of a Financial Institution

B. TEXAS DEPARTMENT OF BANKING

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

C. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 01-22-00712-CV, in the First Court of Appeals, Houston, Texas

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 52, Concerning Charter Applications, Resulting from Rule Review

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 53, Concerning Additional Offices, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 57, Concerning Change of Office Location or Name, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 60, Concerning Savings Associations, Resulting from Rule Review
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 61, Concerning Hearings, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 63, Concerning Fees and Charges, Resulting from Rule Review
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 64, Concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Resulting from Rule Review
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 65, Concerning Loans and Investments, Resulting from Rule Review
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 67, Concerning Savings and Deposit Accounts, Resulting from Rule Review
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 69, Concerning Reorganization, Merger, Consolidation, Acquisition and Conversion, Resulting from Rule Review
12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 71, Concerning Change of Control, Resulting from Rule Review
13. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 73, Concerning Subsidiary Corporations, Resulting from Rule Review
14. 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.

This page left blank intentionally.

MINUTES OF THE FINANCE COMMISSION MEETING Friday, February 17, 2023

The Finance Commission of Texas convened at 9:00 a.m., on February 17, 2023, with the following members present:

Finance Commission Members in Attendance:

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

Commissioner Charles G. Cooper announced there was a quorum with 11 members present. *(1:16 on audio file).*

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the December 16, 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.	1:50 Start of discussion
3. Consent Agenda – Items A1 and D2	Vince Puente made a motion to Approve Consent Agenda items A1 and D2. Laura Warren seconded, and the motion passed.	2:03 Start of discussion 2:20 Vote
4. Finance Commission Operations	No Action Required.	2:43 Start of discussion
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	Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2023 First Quarter Investment Officer Reports passed.	8:31 Start of discussion
1. Office of Consumer Credit Commissioner		8:37 Vote
2. Department of Savings and Mortgage Lending		
3. Texas Department of Banking		

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2023 First Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Department of Savings and Mortgage Lending 3. Texas Department of Banking 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' 2023 First Quarter Financial Statements passed.</p>	<p>8:54 Start of discussion</p> <p>9:01 Vote</p>
<p>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</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Solicitation of an Internal Auditor for the Finance Commission Agencies for Fiscal Year 2024 passed.</p>	<p>9:13 Start of discussion</p> <p>9:23 Vote</p>
<p>D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Texas Financial Education Endowment Fund</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>E. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Activities of the Mortgage Grant Fund</p>	<p>No Discussion</p>	<p>n/a</p>
<p>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</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>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</p>	<p>No Discussion.</p>	<p>n/a</p>
<p>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</p>	<p>No Discussion.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
9. Discussion of and Consultation on Security Audit, Possible Issue Related to Confidential or Sensitive Information, Security Breach Audit and Assessments or Deployment Related to Information Resources Technology as Authorized by §§ 551.076 and 551.089, Texas Government	No Discussion.	n/a
B. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	10:40 Start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 01-22-00712-CV</i> , in the First Court of Appeals, Houston, Texas	No Action Required.	n/a
C. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities	No Action Required.	29:55 Start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a
D. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Non-Depository Supervision Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities, including Consumer Complaint Data; and g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	47:22 Start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
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	On Consent Agenda – Item D2 This item Approved on the Consent Agenda	n/a
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion.	n/a

There being no further business, Chairman Phillip Holt adjourned the meeting of the Finance Commission at 10:30 a.m. (1:29:21 on the audio file).

Phillip Holt, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Ruth Wright, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

April 21, 2023

A. Finance Commission Matters

1. Review and Approval of the Minutes of the February 17, 2023, Finance Commission Meeting

This page left blank intentionally.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

MEMORANDUM

TO: Finance Commission of Texas

FROM: Charles G. Cooper, Commissioner

DATE: February 28, 2023

RE: Department of Banking Priorities for Fiscal Year 2023 Update

I. LEGISLATIVE – *State and National Legislative Issues*

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

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

Update:

- *Maintained contact with state and federal legislative committees.*
- *Responded to requests for information from state legislators relating to regulated financial service providers.*
- *Commissioner Cooper testified on behalf of the Texas Department of Banking at the House Pensions, Investments & Financial Services organizational hearing on March 1, 2023.*

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

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

Update:

- *Beginning in January, weekly legislative reports were provided by email to Commission members.*
- *Commission members were provided an update on legislative matters at the December and February meetings.*

- *Finance Commission members received copies of Department press releases and industry notices.*

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

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

Update:

- *Suggestions for statutory improvements were provided to the offices of Senator Johnson, Senator Parker, and Representative Lambert.*
- *In February, met with staff members of the Pensions, Investments, and Financial Services Committee to provide information regarding the banking system.*
- *In September, met with staff members of the Business and Commerce Committee to discuss blockchain and virtual currencies interim charge.*
- *Resource information relating to bills affecting regulated entities has been provided to several legislative offices.*
- *The agency is currently tracking 459 bills and resolutions.*
- *The agency has completed thirty fourteen fiscal notes related to filed bills.*

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

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

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

Update:

- *The Bank & Trust (B&T) division actively monitors and responds to risk posed by effects of inflationary pressures, and the rapid increase in interest rates and their impact to institutions' operations. The Department maintains communication with regulated entities between examinations and performs off-site monitoring of key financial metrics.*
- *The Non-Depository Supervision (NDS) division continues to actively monitor various risk factors affecting licensed entities, including the changing circumstances resulting from current cryptocurrency events. The Department also monitors critical financial metrics for licensed money service business (MSB) entities off-site. The majority of examinations of Texas-domiciled NDS licensed entities are performed on-site. Several examinations of out-of-state*

domiciled licensed entities are conducted on-site or in a hybrid status depending on the risk profile of the company and, as applicable, in coordination with other MSB state regulators.

- *Through February 28, 2023, all B&T and NDS key performance measures were either met or exceeded.*

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

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

Update:

- *Commissioner Cooper and various staff represented the Department at two Texas Bankers Association (TBA) and FDIC Banker Outreach Programs throughout Texas in the first six months of the fiscal year. The program covered emerging risks in a rising rate and inflationary environment, consumer protection, third-party risk management, and information technology/cybersecurity risk management.*
- *Commissioner Cooper participated as a panelist at the Independent Bankers Association of Texas (IBAT) Winter Summit in Avon, Colorado in January 2023.*
- *Commissioner Cooper and staff represented the Department at the CSBS Board Meeting & Supervisor Symposium in New York, New York in December 2022. The event is an annual learning and networking event for senior state officials responsible for state bank and non-bank supervision and regulation.*
- *Commissioner Cooper represented the Department at the FDIC Advisory Committee of State Regulators at FDIC headquarters in Washington, D.C., on October 24, 2022.*
- *Commissioner Cooper represented the Department at the 2022 Community Banking Research Conference on September 28, 2022. The virtual conference, which was co-sponsored by CSBS, the Federal Reserve System, and the FDIC, focused on a wide variety of topics affecting community banks.*
- *Commissioner Cooper and staff represented the Department at the IBAT Annual Convention in Fort Worth on September 24, 2022. The convention focused on key issues impacting the banking industry, specifically those related to community banks.*
- *Commissioner Cooper and staff participated in the Money Transmitters Regulators Association (MTRA) Annual Conference and Regulators' School in Fort Worth, which began on September 19, 2022. The conference provided an opportunity for MTRA member states and the MSB industry to discuss topics impacting MSB regulation. Director Saucillo was a speaker in some panels and presentations that discussed current matters moving MSBs, such as the Networked Supervision approach.*

- *Commissioner Cooper and staff represented the Department at the CSBS Supervisory Strategic Planning Meeting in Big Sky, Montana on September 12, 2022. The meeting provided an opportunity to help direct the long-term strategic direction of CSBS as well as set priorities for the coming year.*
- *Department staff participated in a Regulator Outreach Meeting with members from the Federal Reserve Bank of Dallas virtually on September 8, 2022. Meeting topics included payment system risk, discount window operations, management of daylight and overnight credit, and bank condition monitoring.*
- *NDS staff continues to participate in State Examination System (SES) meetings to discuss and provide ongoing feedback to CSBS personnel regarding SES. SES is an examination management system developed by the CSBS to facilitate MSB examinations by improving communication and coordination among the states and licensees. NDS continues to assess SES system functionality during select examinations.*
- *The Department is an active member of the Multi-State MSB Examination Taskforce (MMET). Commissioner Cooper continues to serve as the Chairman of MMET.*
- *NDS staff participates in monthly North American Death Care Regulators Association (DCRA) virtual meetings to discuss matters affecting the death care industry.*
- *NDS Director Saucillo continues to serve as a member of the MTRA Board of Directors.*
- *NDS Director Saucillo continues to be a State Coordinating Committee (SCC) member. The SCC is responsible for coordinating the supervision of activities related to MSBs, mortgages, debt collection, and payday lending with the CFPB.*
- *NDS Director Saucillo leads the MSB Enforcement Action Taskforce which was established in December 2022. The taskforce meets monthly to work with other state regulators to identify and monitor troubled MSBs to coordinate actions and responses to safety and soundness concerns.*
- *Deputy Commissioner Rodriguez is a member of the CSBS Education Foundation Board of Trustees.*
- *Commissioner Cooper is a member of the CSBS Board of Directors, the District IV Chair, and serves on the Regulatory Committee.*

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

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

heightened risk of becoming a problem bank to minimize the adverse impact on depositors, shareholders, and the banking system in general.

Update:

- *Commissioner Cooper continues to represent the state banking supervisors of the Financial and Banking Information Infrastructure Committee (FBIIC) and attends the meetings and briefings of this group. The Director of IT Security Examinations also attends meetings related to cybersecurity.*
- *Commissioner Cooper was re-appointed in September 2022 for a third consecutive term to serve as the state bank representative on the Financial Stability Oversight Council (FSOC). The Commissioner concluded his service on December 31, 2022, after representing state banking regulators' perspective on several important issues, including climate-related financial risk and state-federal pandemic coordination. FSOC consists of federal regulators, and an independent insurance expert that are charged with identifying risks to the financial stability of the United States; promoting market discipline; and responding to emerging risk to the stability of the United States' financial system.*
- *B&T and NDS continue to monitor cybersecurity incidents and the impact on the regulated entities and consumers. Incidents are reviewed in coordination with an Information Technology Specialist (IT), as needed.*
- *Based on available resources and certain risk factors, NDS continues to collaborate with the IT examination staff to review MSB license holder's IT systems.*
- *B&T and NDS examiners continue to attend specialized training to ensure Texas has a safe, sound, and competitive financial service system, and provide efficient and effective regulatory oversight of regulated entities.*
- *B&T division continues to monitor the condition of banks and trust companies between examination through our off-site monitoring programs. These programs consist of quarterly reviews of call report data, the use of data analytic tools, and conducting calls to bank management. The division's watch list of institutions exhibiting heightened risk is monitored and adjusted quarterly with appropriate actions taken against organizations when applicable.*
- *In coordination with other states and licensees, NDS division continues to perform off-site monitoring of licensed entities, including the quarterly reviews of MSB call reports, reviews of key financial metrics, consumer complaints, and current events.*

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

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

Update:

- *Department staff participated in a combined total of eight regulatory panel discussions and information technology/cybersecurity presentations with community bankers in the first six months of fiscal year 2023.*
- *The January 2023 edition of the [Texas Bank Report](#) featured articles on key issues, including concerns on inflation, government regulation, the cost/availability of labor, and cyberattacks. In addition, legislative priorities for the 88th session were provided.*
- *The September 2022 edition of the [Texas Bank Report](#) examined events impacting the state's banking system; specifically, the effect of a severe drought on agriculture lenders and the need to remain vigilant regarding cybersecurity.*
- *NDS staff continues to participate in various MMET, and MTRA committees, including the MTRA Examination Standards Committee, tasked with updating the MSB work program and the MTRA Licensing/Emerging Issues calls. The Department participates in routine scheduling calls and meetings facilitated by the MMET to coordinate multi-state examinations as part of the Networked Supervision of MSBs and discuss current supervisory issues impacting the MSB area, including cryptocurrency-related matters.*
- *NDS staff is a member of a newly created Enforcement Action Taskforce charged with monitoring and coordinating MSB-related issues nationally. In coordination with CSBS and MTRA, the taskforce will identify and monitor troubled institutions and risky behavior, develop enforcement policies and procedures, and coordinate responses to negative news that indicates safety and soundness concerns.*
- *NDS staff is a member-at-large of the Executive Committee of the North American Death Care Regulators Association (DCRA), which strives to promote a forum for death care regulators to discuss problems affecting the public and the death care industry.*

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

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

Update:

- *Agency staff continues to monitor regulated industries and initiate enforcement actions against both licensed and unlicensed entities that are engaging in apparent illegal practices. Through the second fiscal quarter, these actions were taken against individuals and entities:*
 - *Issued two prohibition orders against bank employees.*
 - *Issued nine consent orders against unauthorized money transmitters.*
 - *Brought one case to hearing involving an unauthorized prepaid funeral contract seller.*

- *Referred two matters to the Office of the Attorney General for representation in bankruptcy proceedings involving money transmitters.*
- *Twenty-one MSB entities were notified that they may be engaged in money transmission without a license; information is under review by the Legal Division.*

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

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

Update:

- *Consumer assistance activity reports the number and percentage of written complaints resolved in 90 days at each Finance Commission meeting.*

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

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

Update:

- *Issued Examiner Bulletins (XB):*
 - *XB 2022-02 CML – Guidelines for Procedures and Work Paper Documentation for Commercial Examinations (September 2022)*
 - *XB 2022-03 TR – Guidelines for Procedures and Work Paper Documentation for Commercial Examinations (September 2022)*
 - *XB 2022-02-IT – Guidelines for Procedures and Work Paper Documentation for Commercial Examinations (September 2022)*
 - *XB 2023-01 – Guidelines for Imaging Examination Work Papers (January 2023)*
- *Reviewed and revised commercial examination procedures:*
 - *Planning & Control Table of Contents*
 - *BSA/AML*
- *Reviewed and revised trust examination procedures:*
 - *Planning & Control*
 - *Planning & Control Table of Contents*
 - *Request Lists for Trust Department, Trust Company, and Exempt Trust Company*
 - *Fiduciary & Corporate Management*

- *Fiduciary & Corporate Management Table of Contents*
- *Operations, Internal Controls, & Audits*
- *Operations, Internal Controls, & Audits Table of Contents*
- *Fiduciary & Corporate Earnings*
- *Compliance*
- *Fiduciary Asset Management*
- *Trust Company Capital*
- *Trust Company Asset Quality*
- *Trust Company Liquidity*
- *Small Trust Department Table of Contents*
- *BSA/AML*
- *Reviewed and revised Information Technology examination procedures:*
 - *Scope Form*
 - *Planning*
- *Reviewed and revised MSB examination procedures:*
 - *Cybersecurity Incident*
 - *BSA/AML – Employee Training*
 - *Information Technology*
 - *Examination Notice and Request List*
 - *Cryptocurrency Questionnaire*
- *Reviewed and revised Prepaid Funeral Contract Examination Notice and Request List to clarify financial statements requirements.*
- *Updated Bank of Anytown (September 2022)*
- *Updated examination reference materials for commercial, trust, and IT procedures (Monthly).*
- *Examiners' Council reviewed commercial, trust, and information technology examination workpapers as required per Administrative Memorandum 2015. Report issued in timely manner. (January / February 2023)*
- *Revised and Issued Administrative Memorandum (AM):*
- *AM 2022 and Risk Ratios – Institution Review Process for State-Chartered Banks (February 2023)*

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

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

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

Update:

- *Revised and issued Supervisory Memorandum (SM):*
 - *SM 1031 – Examination Frequency for Perpetual Care Cemeteries (September 2022)*

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

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

Update:

- *Reviewed 7 TAC, Chapter 26, Perpetual Care Cemetery rules in accordance with requirement in Texas Government Code, § 2001.039. Determined that chapter should continue to exist, and recommended amendments at the December Finance Commission meeting.*
- *Presented at the December Finance Commission meeting proposed amendments to 7 TAC, § 3.37, Concerning Calculation of Annual Assessments for Banks. The amendments were formally adopted at the February meeting.*

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

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

Update:

- *The January 2023 edition of the [Texas Bank Report](#) featured the financial education programs of Rio Bank and International Bank of Commerce.*
- *On November 30, 2022, a free financial education webinar was presented jointly by the Office of Consumer Credit Commissioner and Texas Department of Banking providing information on avoiding the risk of financial exploitation. There were 65 participants.*
- *The September 2022 edition of the [Texas Bank Report](#) featured the financial education programs of First Community Bank and Texas Regional Bank.*

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

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

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

Update:

- *Sixteen positions were posted from September 1, 2022, through February 28, 2022.*
- *Hired five Financial Examiner I and one Financial Examiner I - Trust in B&T Supervision.*
- *Hired two Accountant V in Administrative Services.*
- *Hired one Human Resources Specialist III in Human Resources.*
- *Hired one Law Clerk in Legal.*
- *Hired one Financial Examiner VI and one Financial Examiner III in Corporate Activities.*
- *Hired one Administrative Assistant IV in NDS.*
- *Utilized LinkedIn to post open positions and actively recruit qualified candidates.*
- *Agency representatives attended fourteen career fairs.*
- *Currently interviewing Financial Examiner I positions in B&T Supervision, IT and Trust to potentially fill 11 assistant examiner positions.*
- *Revised Administrative Memorandum 2031 to reflect staffing changes. (October 2022 and February 2023)*
- *Completed CAPPS Recruit discovery, gap resolution, and conference room pilot activities.*

IV.2 **Objective:** Strive to attain full staffing, with an emphasis on employee retention and staff diversity. Provide and promote opportunities for professional development for junior staff and offer opportunities in new responsibilities to minimize the loss of institutional knowledge as vacancies and retirements occur. Continue efforts to maintain a competitive salary structure. Obtain feedback from employees and implement changes where feasible.

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

Update:

- *Agency fiscal year 2023 turnover rate through February 28, 2023, was 6.65%. Financial Examiner turnover was 8.47%. There were no retirements during this period.*
- *Through February 28, 2023, the agency hired 13 employees and lost 11.*
- *Promoted 41 individuals to positions with increased responsibility and qualifications.*
- *Administered Supervisor Performance Evaluations in November 2022, and Annual Employee Performance Appraisals in February 2023 using NEOGOV Perform system.*

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

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

Update:

- *MIS worked with staff members to determine an updated laptop configuration and manufacturer. Computers have been ordered in preparation for the annual replacement cycle.*
- *An upgrade to the Data Exchange (DEX) portal is underway to enhance regulated entities, federal counterparts, and employee experience.*
- *MIS maintained software patching in accordance with procedures and modified applications to be more secure.*
- *The Department worked in February to implement the Governors directive regarding banned technologies.*
- *MIS updated and deployed seven applications to production as required by the program areas and approved by Information Technology Steering Committee in the first half of fiscal year 2023.*

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

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

Update:

- *MIS conducted two tabletop exercises for Disaster Recovery exercises.*
 - *October 27, 2022*
 - *January 26, 2023*
- *The annual Information Security Training for the Department began in February 2023.*
- *MIS updated computers to remove old versions of SQL and provided updates to the latest version for staff.*

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

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

Update:

- *Twenty examiners in the Financial Examiner I–III series attended 13 different training courses in the first six months of fiscal year 2023.*
- *In the first half of fiscal year 2023, four examiners received their commission.*
- *In February, a committee was established to develop a new training program to offer a structured training regimen for new financial examiners. The program will be governed by a training development committee and managed by key personnel.*

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

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

Update:

- *Monthly financial statements were provided to all divisions for review and reported quarterly to the Finance Commission.*
- *Budget variances are analyzed quarterly.*
- *For the first six months of fiscal year 2023, actual revenues were at 101.2% of budget and actual expenditures were at 90.0% of budget.*
- *Cash reserves are within policy guidelines of at least two months, but no more than six months.*

- IV.7 **Objective:** Periodically review internal controls and processes to improve the efficiency and effectiveness of the agency. Coordinate with the Office of Consumer Credit Commissioner and Department of Savings and Mortgage Lending, when possible, to minimize duplication of duties and processes.

Measure: Report on improvements identified and implemented.

Update:

- *Updated Chapter 14 to accommodate Governors Orders – February 2023*
- *MIS Divisional Procedures Updated:*
 - *Fraudulent Website Procedures – January 2023*
 - *MIS Manual – November 2022*

- *Critical Asset Management (Inventory) – October 2022*
- *On-Boarding/Off-Boarding Procedures – September 2022*

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

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

Update:

- *Real estate brokerage, architectural, and outside legal counsel services contracts are in effect for the relocation of the Finance Commission agencies.*
- *The agencies have been in communications with TxDMV and TxDOT regarding the four-acre parcel on the Camp Hubbard campus. The site is anticipated to be available to the Finance Commission agencies in the second quarter of 2024.*
- *The agencies requested approval from the Office of the Governor to increase the cash reserves for long-term facility planning, as a result of the December 2021 action of the Finance Commission. In March, subsequent to the reporting period for this report, the agencies received approval to increase their cash reserves.*
- *A Phase I Environmental Site Assessment (Phase I ESA) to investigate the property's current and historical use has been initiated.*

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

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

Update:

- *The plan update was submitted to SORM in January 2023, and we received a favorable review. The next Plan exercise is due to SORM in January 2024.*

Office of Consumer Credit Commissioner

Agency Priorities – Mid-Year Status Report

FY 2023

1. LEGISLATIVE

1.1. 88th Legislative Session.

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

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

Status: *In November 2022, the OCCC began monitoring legislation filed in the 2023 88th Regular Session. Since the beginning of the legislative session in January 2023, the OCCC has been providing regular weekly updates to the Finance Commission. The OCCC's high-priority legislation report includes 48 bills that directly affect the OCCC and its regulated industries. The OCCC has recommended proposed consistency, modernization, and technical corrections to the Legislature which have been filed in legislation in the House and the Senate. OCCC staff has provided resource support related to legislation.*

2. REGULATORY ACTIVITIES

2.1. Regulated Entities - Supervision.

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

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

Status as of 2/28/23:

License Type	Examination Compliance	Enforcement Activity
Pawnshop	100% acceptable level of compliance	16 injunctive actions 10 administrative penalty actions
Regulated Lender	98.1% acceptable level of compliance	25 injunctive actions 19 administrative penalty actions 2 license revocations
Property Tax Lender	100% acceptable level of compliance	0 enforcement actions
Credit Access Business	99.2% acceptable level of compliance	2 injunctive actions 2 license revocations

Motor Vehicle Sales Finance	87.6% acceptable level of compliance	2 injunctive actions 3 administrative penalty actions 1 license application denial 2 license revocations
--------------------------------	--------------------------------------	---

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

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

Status: *The OCCC has completed 1,349 examinations at mid-year which is 86% of the pro rata goal and 43% of the annual goal for fiscal year 2023. The overall compliance rate is 94.6% for all five examination areas combined. Restitution from examinations conducted is approximately \$5.6 million as of February 28, 2023. During this period, the agency closed 84 enforcement actions concerning the five examination areas. The 84 closed cases include 45 injunctive actions, 32 administrative penalty actions, 6 license revocations, and 1 license application denial.*

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

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

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

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

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

Status: *The OCCC is currently participating in one multi-state exam with another scheduled to being in June 2023. The current exam is a Multi-State Auto Finance Exam and is led by two OCCC Senior Examiners. The upcoming scheduled examination is a multi-state mortgage exam which will be conducted using the State Examination System administered and maintained by CSBS.*

2.2. Licensing.

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

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

Status: *The licensing department continues to prioritize customer service and regularly collaborates on emerging issues, best practices, and communication methods to provide good customer service. With regard to application processing, the department is processing less than 80% of applications within 60 days and is seeking ways to reduce application processing time. The team continues to conduct professional development training through round-table discussions, online training and in-person discussion on topics such as time management. Additional trainings are being sought.*

3. POLICY AND RULE DEVELOPMENT

3.1. Rulemaking.

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

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

Status: *In October 2022, the Finance Commission completed the rule review of 7 TAC Chapter 90 by readopting the chapter, with amendments proposed in a separate rule action. Before presenting the rule action to the Finance Commission, OCCC staff posted an advance notice of rule review and held a webinar to obtain input from stakeholders.*

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

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

Status: *If any rules are necessary to implement 2023 legislation, the OCCC intends to work with stakeholders and prepare rule proposals during summer 2023.*

4. CONSUMER ISSUES / COMMUNICATION & OUTREACH STRATEGIES

4.1 Texas Financial Education Endowment Fund (TFEE).

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

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

Status: *The 2022-2023 grant cycle reached the halfway point on December 31, 2022. At that time, many organizations were significantly ahead of their grant program goals. As of March 31, 2023, \$254,700 has been requested in reimbursement (62% of the eligible funds). OCCC staff are preparing for the 2024-2025 grant cycle and have been marketing and promoting the grant at various community events throughout the state.*

4.2 Financial Education

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

Measure: Report on number of people and programs reached.

Status: *As of the second quarter of FY '23 staff have provided financial education to 294 participants and reached out to 20 organizations to promote financial education services or support. The OCCC continues to utilize social media to promote webinars and educational classes and has partnered with the Department of Banking for two webinars. The agency has also begun offering on-demand webinars to reach a wider audience.*

4.3. Industry and Stakeholder Outreach

4.3.1. Objective: Continue to build relationships with industry and interested stakeholders to ensure clear communications on education or regulatory compliance. Monitor emerging

issues in agency's areas of regulation and communicate the impact to regulated and licensed entities. Develop publications that address topics of interest and share with regulated and licensed entities. Participate in or attend industry meetings or seminars.

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

Status: *The OCCC published advisory bulletins on licensing requirements for property tax lenders and motor vehicle sales finance companies. OCCC legal staff hosted a webinar relating to the rule review for regulated lender plain language contracts. As of the second quarter of FY '23 the OCCC has participated in at least thirteen events to foster communications with stakeholders. The agency participates in a DMV Motor Vehicle seminar on a reoccurring basis, has attended stakeholder conferences, such as the American Financial Services Association Vehicle Finance Conference and the TPTLA annual meeting. A staff member also serves on the board of the Texas Jump\$tart Coalition. Additionally, financial examiners routinely participate in training events with NACCA, AARMR, and CSBS.*

5. AGENCY MANAGEMENT

5.1. Performance Measures.

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

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

Status: *At mid-year, the agency is on track to achieve 6 of 11 key performance targets. The measure in the exam area and in the financial education area are expected to draw within range during the remainder of the fiscal year. Licensing productivity has been impacted by staffing issues. As those issues have resolved, productivity gains should be noted in the second half of the fiscal year.*

5.2. Human Resources.

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

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

Status: *At the mid-year point, the OCCC is holding turnover below the benchmark of 16%. The turnover rate is 7.5% as of the end of February. The OCCC recruited two Financial Examiner I's for the Houston region in January 2023 and filled multiple administrative roles for the Austin Headquarters including Compliance Analyst, Administrative Assistant, and Customer Service Representative in February 2023.*

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

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

Status: *All examiners attended the agency's Examiner Conference and Training School in September where they received 40 hours of continuing education. Compliance Analysts from CAS also attended this training and received 40 hours of continuing education. In November, five Examiners attended NACCA's Annual Examiner Training school in Nashville and in the spring two Examiners attended virtual CSBS training related to cryptocurrency regulation. Additionally, the OCCC has conducted training in January 2023 for all staff OCCC, and another agency-wide training is scheduled with DPS this spring. Further all staff continue regularly assigned monthly cybersecurity training.*

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

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

Status: *Human Resource policies and procedures continue to be reviewed and updated. The next version of the Employee Manual is in the final stage of revision and is expected to be published and released during Q3. An updated Supervisor Manual is a priority for the second half of the fiscal year.*

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

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

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

Status: *Management reviews internal financial performance monthly. Financial reports are provided to departments with timely information on the status of department-specific expenditures. Variances are analyzed and, if necessary, modifications to future budgeted activities may be proposed. Quarterly financial statements for the 1st and 2nd quarter were prepared and provided to the Finance Commission. Revenues and expenditures are within expectations. Human Resource representatives are beginning evaluation of the CAPPS recruit module to determine if it may benefit the agency's recruiting efforts.*

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

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

Status: *Real estate brokerage, architectural, and outside legal counsel services contracts are in effect for the relocation of the Finance Commission agencies. The agencies have been in communications with TxDOT and TxDOT regarding the four-acre parcel on the Camp Hubbard campus. The site is anticipated to be available to the Finance Commission agencies in the second quarter of 2024.*

The agencies have requested an approval from the Office of the Governor to increase the cash reserves for long-term facility planning, as a result of the December 2021 action of the Finance Commission. In March (which is subsequent to the 2/28 report date), the agencies received the approval.

A Phase I Environmental Site Assessment (Phase 1 ESA) to investigate the property's current and historical use has been initiated.

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

Measure: Report on improvements identified and implemented.

Status: *The OCCC reviewed internal controls and segregation of duties in the accounting area and made corresponding adjustments in the alignment of duties. The OCCC and DOB jointly presented two consumer education webinars during the period. The FC agencies continue to seek opportunities to enhance efficiency and minimize duplication.*

5.4. Information Technology.

- 5.4.1. Objective: Productivity Cloud.** Migrate agency endpoint computers to the MS Office 365 application suite. Prevalent dispersal of O365 among other organizations in and beyond Texas means some compatibility issues will be immediately mitigated. Operations will benefit from continuity with some familiar apps (e.g., Word, Excel) and ready integration with other communications tools (MS Teams, SharePoint).

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

Status: *Migration to the MS Office 365 application suite successfully went live on February 1, 2023. Agency users were migrated to Outlook, Teams, the 365-generation of familiar apps like Word and Excel, SharePoint, and OneDrive. Additionally, the OCCC's intranet site (OPUS) was migrated to SharePoint.*

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

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

Status: *OCCC added new functionality for Annual Reporting and updates to Debt Management report features. Initial planning on the automated testing protocol has begun. The implementation date will likely be delayed due to the necessity of first addressing revisions to ALECS to ensure appropriate processing for payment failures. Unforeseen modifications to the Texas Payment Engine (TPE), which is used by ALECS for processing payments, has created the need for these revisions.*

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

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

Status: *IT procured a new bloc of laptops which, when deployed to replace the oldest segment in the current fleet, will have the entire agency capable of upgrading to Windows 11. The agency stack is in advanced planning for updating several hardware components, including switches, which will refresh overall lifetime and improve security.*

Agency Priorities for Fiscal Year 2023

I. Legislative – State and National Legislation

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

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

Status: *The Department reviews all legislation to identify bills that may affect the Department or its regulated industries. The Department is actively monitoring 814 bills. The status of bills having a significant impact on the Department and its regulated industries is reported weekly to the Finance Commission.*

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

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

Status: *The Department has made its staff available to serve as a resource witness to the Texas Legislature. The Department has not been asked to provide testimony thus far during the 88th Legislature's Regular Session; however, Department staff has responded promptly to requests for information made by the Legislature and completed one fiscal note related to a filed bill.*

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

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

Status: *During the first half of FY2023, the Department monitored legislation and regulations at the federal level and reported relevant information to the Finance Commission and the Department's regulated industries when appropriate.*

II. Regulation – Thrift and Mortgage

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

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

Status: *Performance measures targets for FY2023 were established in August 2022. Actual performance is reported to the Finance Commission quarterly.*

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

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

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

Status: *The Department monitored quarterly financials reported by state savings banks to identify risks or trends in the portfolio and a summary of the portfolio was reported to the Finance Commission on a regular basis and conducted additional follow-up as necessary. During the first half of FY23, the department initiated three supervisory actions.*

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

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

Status: *Monthly Emerging Issues calls were held with the industry to communicate current topics and bring awareness to exam issues. In September 2022, the annual Thrift Industry Day was held in Austin, Texas covering economic trends, cybersecurity, and other current banking topics. Monthly the Thrift Division participates in various trainings to stay apprised of topics of interest.*

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

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

Status: *Ongoing evaluation of process and procedures continues to allow for added efficiencies.*

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

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

Status: *As of February 28, 2023, the Department has issued 200 examinations of mortgage entities covering 3,657 mortgage loan originators. The Department has largely maintained the mortgage examination schedule, as set by the Department policy, and issued formal and informal enforcement actions as deemed necessary. The Department has provided information on the top violations to the industry on the Mortgage Examination page of its website, during Emerging Issues webinars, and at various presentations to local associations.*

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

Measure: Report on enforcement actions.

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

Status: *The Department provides reports at each meeting of the Finance Commission concerning enforcement actions taken and did so during the first half of FY2023.*

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

Measure:

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

Status:

- a. *The Department provides reports at each meeting of the Finance Commission concerning the aging of complaints and did so during the first half of FY2023.*
- b. *Department staff regularly reviews complaint aging to resolve complaints on a timely basis, with an emphasis on resolving complaints aged over 120 days as expeditiously as possible. As of February 28, 2023, the Department did not have any complaints aged over 120 days.*
- c. *The Department conducts consumer complaint surveys on a monthly basis and did so in the first half of FY2023. The Department regularly reviews survey data to identify any trends and potential areas for improvement, including opportunities for staff training and potential adjustments to processes and procedures concerning the analysis and investigation of consumer complaints.*

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

Measure:

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

Status:

- a. *For the first two quarters of the fiscal year, the Department has processed 6,069 applications and made a final decision within 60 days of the date of the application on 82.33% of the processed applications.*
- b. *The Department conducted and reviewed on a quarterly basis surveys of license applicants to identify any trends and potential areas for improvement, including opportunities for staff training and potential adjustments to processes and procedures to reduce processing times and improve overall satisfaction with the Mortgage Licensing section.*

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

Measure:

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

Status:

- a. *The Joint Financial Regulatory Agencies did not initiate any rulemaking actions concerning a home equity interpretation during the first half of FY2023. The Department did not receive any informal requests for an interpretation, as provided by 7 TAC § 151.1(c), during the first half of FY2023. No petitions for rulemaking concerning a home equity interpretation were made during the first half of*

DEPARTMENT OF **SAVINGS AND MORTGAGE LENDING**

FY2023. As a result, no meetings of the Home Equity Lending Working Group occurred during the first half of FY2023.

- b. The Department has implemented the rules and interpretations adopted by the Finance Commission concerning home equity lending interpretations and will implement any new such rules and interpretations adopted during the remainder of FY2023.*

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

Measure:

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

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

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

Measure:

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

Status:

- a. The Department adopted or created an investment policy, program guidelines, and grant eligibility checklist in connection with the Mortgage Grant Fund. The 2023-2024 grant cycle for the Mortgage*

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

Grant Fund began on January 1, 2023. Each grant recipient has executed a grant agreement governing the grant award.

- b. The Commissioner has appointed a Grant Coordinator as provided by 7 TAC § 51.403.*
- c. The Mortgage Grant Advisory Committee in accordance with 7 TAC §51.404 has been formed and fulfilled its duties to advise the Commissioner on the selection of grant recipients for the 2023-2024 grant cycle.*
- d. The Department provides reports at each meeting of the Finance Commission Audit Committee concerning the status and activities of the Mortgage Grant Fund and did so during the first half of FY2023.*

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

Measure:

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

Status: *The Department has adopted and implemented the use of the CSBS State Examination System (SES) for multi-state and coordinated examinations of non-depository mortgage entities.*

- a. On August 23, 2022, the Department submitted the SES Agency Interest Form to the Conference of State Bank Supervisors (CSBS).*
- b. The review of the standard information requests found in the SES library has been completed and appropriate changes to the standard information requests have been made when deemed necessary.*
- c. The Department is conducting its first multi-state examination in SES and will issue the Department's Industry and Communication Plan to inform the mortgage industry of the Department's transition to SES for multi-state examinations when the Department has a firm grasp of SES.*
- d. Senior Mortgage Examination staff and two field examiners have completed the SES training necessary to utilize SES.*
- e. With the experience gained from the first SES examination, the Mortgage Examination section will create and develop suitable examination policies, processes, procedures, and work items to fully implement SES for future multi-state and coordinated examinations.*
- f. The Department will require additional Financial Examiners to take the SES Training courses before conducting any examinations in SES.*

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

Measure:

- a. Revise the Residential Mortgage Loan Servicer Bond to comply with all necessary requirements for an electronic surety bond (ESB).
- b. Submit the revised ESB and ESB Intent to Adopt Form to NLMS.
- c. Update the surety bond rule for residential mortgage loan servicers to permit the use of ESB.

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

- d. Develop and submit the Department's Conversion Plan for the transition to ESB to the NMLS State Relations Team.
- e. Review and approve SRR communication to Surety Companies and Providers alerting them of the adoption of ESB for residential mortgage loan servicers.
- f. Send communication to the Department's residential mortgage loan servicers of the ESB adoption.
- g. Review and approve the News Item to be posted on the NMLS Resource Center.
- h. Provide training to the appropriate Mortgage Licensing staff for the adoption and implementation of the ESB process.
- i. Review and update the company checklist for residential mortgage loan servicers found on the State Licensing Checklist in NMLS.
- j. Update the License Settings and Fee System (LSFS) to reflect the adoption of ESB.
- k. Develop policies, procedures, and work items for the use of ESBs.

Status: *The Mortgage Licensing Section has adopted and implemented the use of electronic surety bonds in NMLS for residential mortgage loan servicers.*

- a. *The Mortgage Licensing and Legal section modified the Residential Mortgage Loan Servicer Bond to comply with the necessary requirements for an electronic surety bond (ESB).*
- b. *On July 25, 2022, the Department submitted its revised ESB and ESB Intent to Adopt Form to NLMS.*
- c. *Effective November 20, 2022, the Finance Commission adopted amendments to 7 TAC § 79.4, concerning Bond Requirement, that rendered the rule compatible with and enabled the use of an ESB by a residential mortgage loan servicer.*
- d. *On September 19, 2022, the Department's Conversion Plan for the transition to ESB was submitted to the NMLS State Relations Team for review and was published by NMLS on September 23, 2022.*
- e. *On September 13, 2022, the Department reviewed and approved the SRR communication to Surety Companies and Providers alerting them of the adoption of ESB for residential mortgage loan servicers by the Department.*
- f. *On September 23, 2022, the Department issued a letter to all existing residential mortgage loan servicers advising them of the ESB adoption.*
- g. *On September 13, 2022, the Department approved the News Item that was posted on the NMLS Resource Center.*
- h. *As of September 14, 2022, all designated Mortgage Licensing staff completed the prerequisite NMLS training courses to adopt and implement the ESB process.*
- i. *On September 13, 2022, the revised company checklist for residential mortgage loan servicers found on the State Licensing Checklist in NMLS was adopted and implemented.*
- j. *The necessary changes in the License Settings and Fee System (LSFS) were adopted to allow ESB.*
- k. *The Mortgage Licensing section is in the process of developing its policies, processes, procedures, and work items for the adoption and implementation of ESB.*

III. Policy and Rule Development

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

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

Status: *Effective November 20, 2022, the Finance Commission adopted new rules in 7 TAC Chapter 75 governing the Department's regulation of savings banks chartered in Texas. Effective November 20, 2022,*

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

the Finance Commission adopted amendments to 7 TAC § 79.4, concerning Bond Requirement, to render the rule compatible with and enable the use of an electronic surety bond by a residential mortgage loan servicer registered with the Department under Texas Finance Code Chapter 158.

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

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

Status: *The 88th Legislature, Regular Session, ends on May 28, 2023, and the deadline for the governor to sign bills into law is June 18, 2023. The Department will pursue any rule changes necessary to implement enacted bills during the second half of FY2023.*

IV. Industry Outreach and Communication

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

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

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

- *On September 14, 2022, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Houston Mortgage Bankers Association. The presentation discussed: (1) the current status of the Mortgage Licensing section; (2) common issues holding up company, branch and RMLO applications; (3) the number of examinations conducted; (4) common examination violations or findings; (5) adopted regulations including the remote work regulation and safeguarding of non-public personal information (Information Security Plan); and (6) an update on complaint issues.*
- *On October 11, 2022, Commissioner Hector Retta and Director of Mortgage Regulation William Purce provided an in-person presentation to the Texas Mortgage Bankers Association – San Antonio. The topics were generally the same topics as discussed in the Houston Mortgage Bankers Association presentation.*
- *On November 7, 2022, the Mortgage Regulation Division staff made several presentations during the 10th Annual Mortgage Industry Seminar including a presentation on the Requirements and Limitations for Texas Home Equity Loans.*
- *The Mortgage Regulation Division held monthly emerging issues webinars with interested stakeholders to address issues affecting the licensing and examination of mortgage related entities or individuals.*

V. Agency Operations

V.1 Objective: Recruit well-qualified personnel, while seeking to broaden the Department's workforce diversity. Train and cross-train employees as needed to minimize knowledge loss due to employee

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

departure and to prepare for business needs due to changes in regulated industries and/or technology. Provide and promote opportunities for professional development through individual training plans.

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

Status: *During the first half of FY23, the Department filled six positions and had five separations of employment, including one retirement. During the same period, 100% of the personnel received job-related training.*

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

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

Status: *The Department reports quarterly its performance to the Finance Commission. As of the end of the second quarter of FY2023, 2 of 4 key performance measures are within +/-5% of target. The Department is working to reduce the deficiencies in the other two measures.*

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

Measure: Report on improvements identified and implemented.

Status: *During the first half of FY23, the Department has not had any audits. As of February 28, 2023, there are no outstanding audit findings, recommendations, or observations. Business processes, however, continue to be reviewed and improved as necessary.*

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

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

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

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

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

Status: *During the first half of FY23, the Department migrated its servers and associated databases and applications to the Statewide Data Center. As of February 28, 2023, the Texas Cybersecurity Framework Assessment was in progress. As deemed appropriate, the Department has implemented critical patches, updates, and upgrades to the network and staff computers.*

DEPARTMENT OF **SAVINGS AND MORTGAGE LENDING**

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

Measure: Report on activities related to the CAPPS implementation

Status: *The Department has developed multiple new and updated existing procedures to reflect the CAPPS use in the business processes.*

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

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

Status: *During the first half of FY23, there have not been major activities to report in this area.*

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

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

Status: *The agencies have requested an approval from the Office of the Governor to increase the cash reserves for long-term facility planning, as a result of the December 2021 action of the Finance Commission. In March 2023, subsequent to this report date, the agencies received the approval.*

B.

Texas Department of Banking

This page left blank intentionally.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

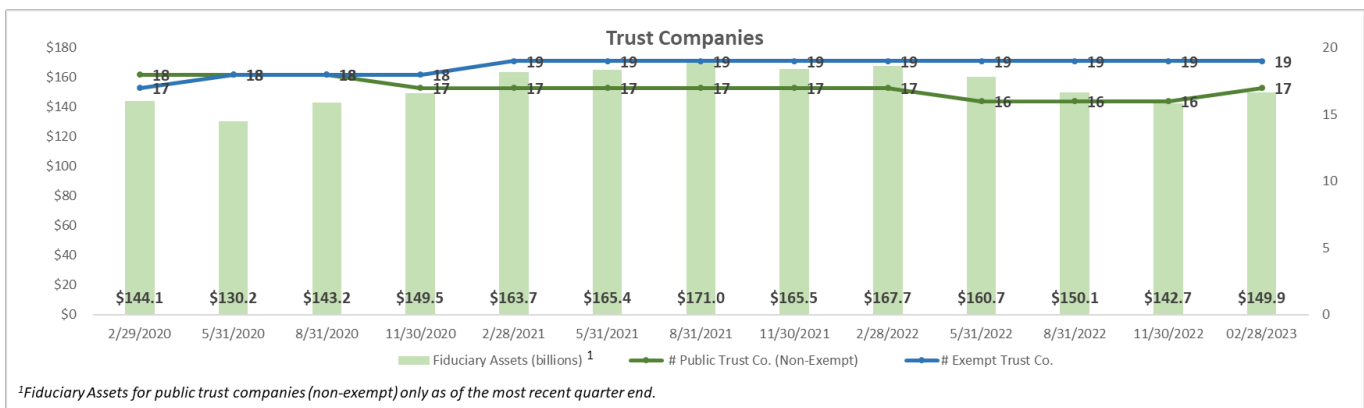
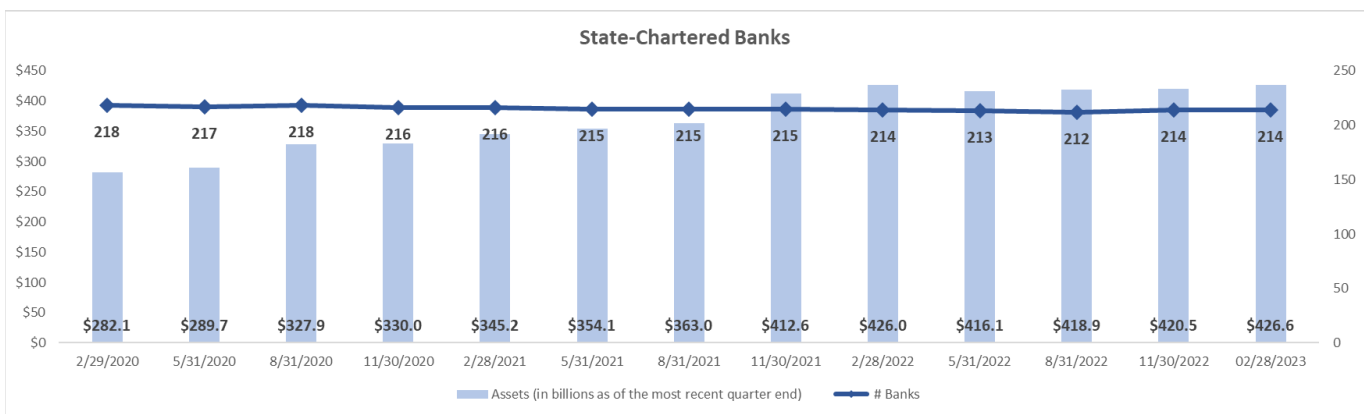
512-475-1300 / 877-276-5554

www.dob.texas.gov

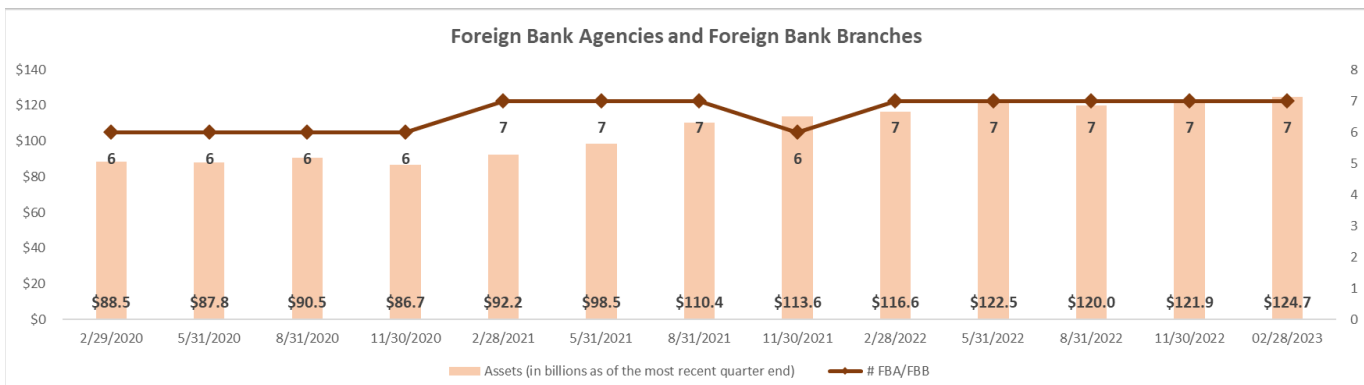
To: Finance Commission Members
From: Jared Whitson, Review Examiner
Date: April 5, 2023
Subject: Summary of the Bank & Trust Supervision Division Activities

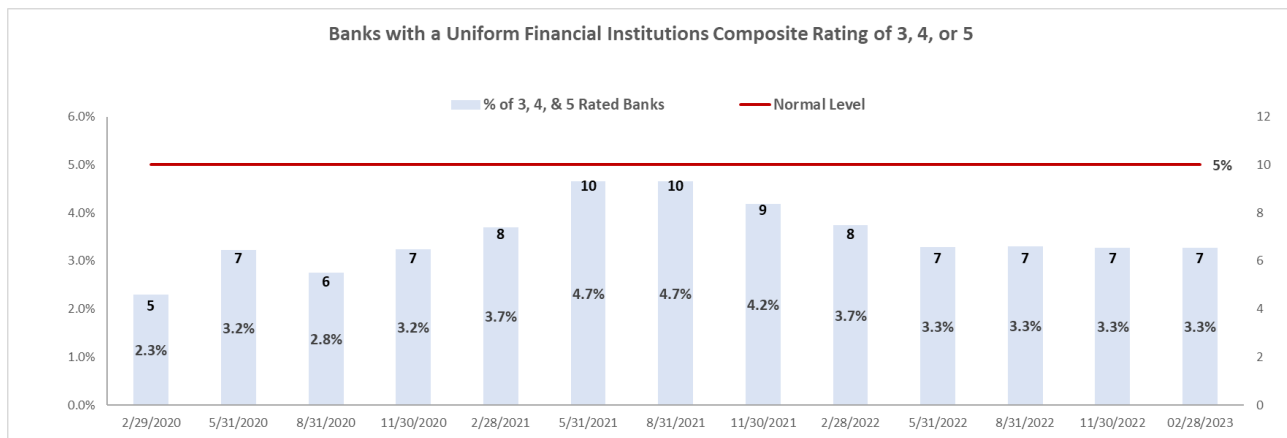
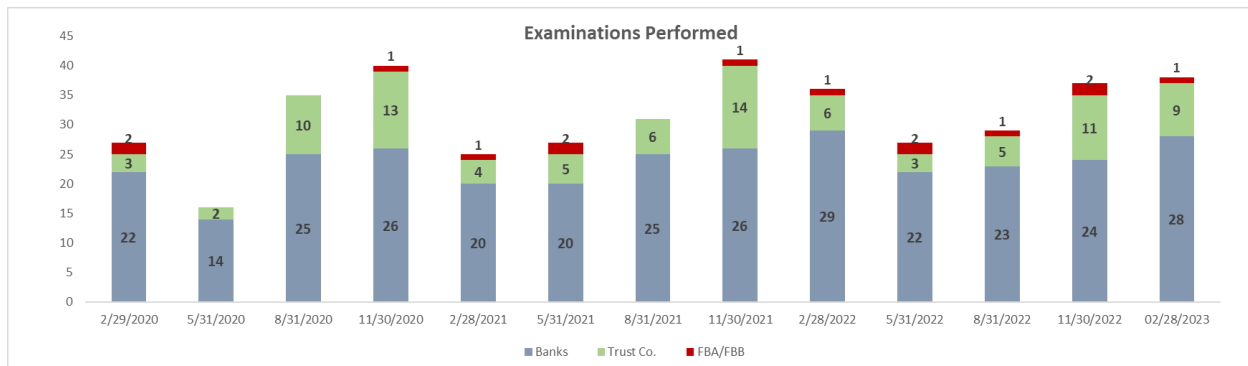
Bank and Trust Supervision – Industry Profiles

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



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

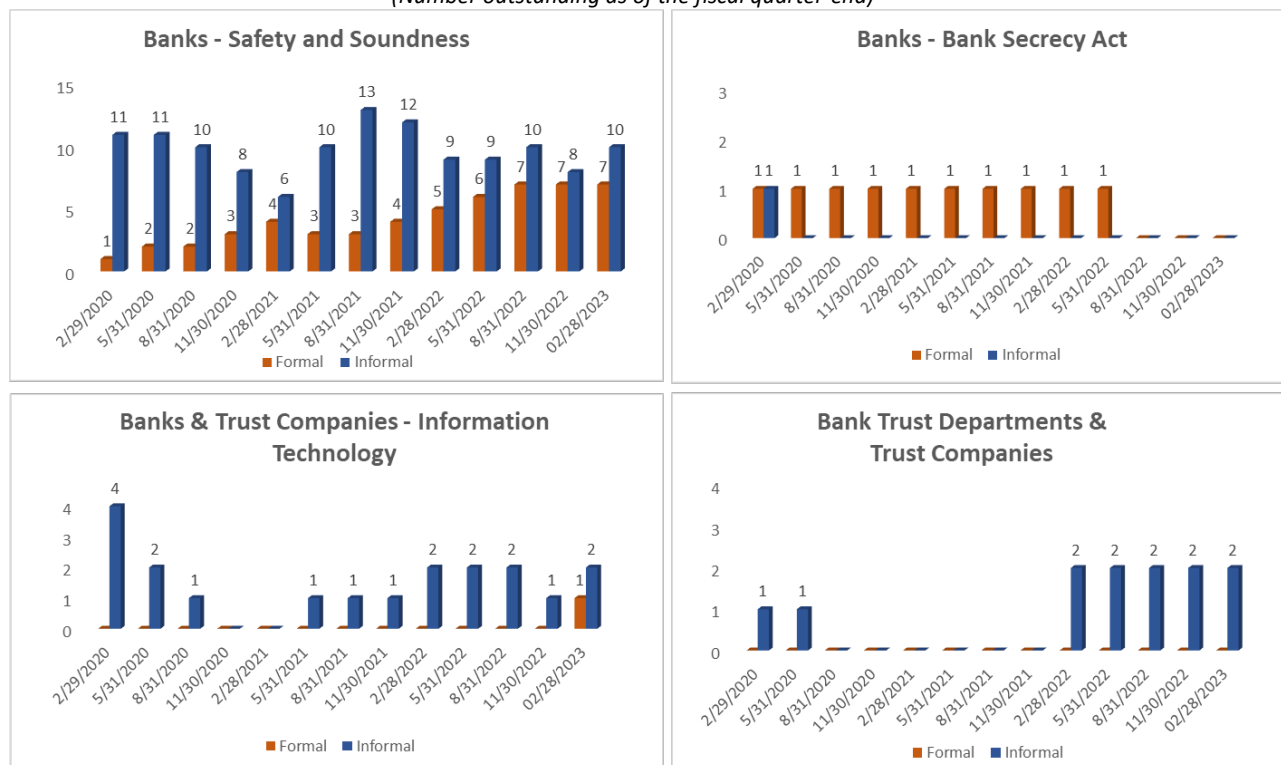




The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem banks remain in the normal range between 3% and 5% of the total number of institutions.

Enforcement Actions Outstanding by Type

(Number outstanding as of the fiscal quarter-end)



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

Compliance with Examination Priorities

Percent of examinations conducted within Department guidelines.

Entity Type	FY 2022	FY 2023 (YTD – Feb 2023)
Commercial Banks	96%	95%
IT	95%	93%
Trust Departments	100%	85%
Foreign Banks (FRB)	92%	100%
Trust Companies (DOB)	96%	74%
IT	88%	75%

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

- 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 – Six exams past due by an average of 11 days.
- IT Examinations of Trust Companies – Two exams past due by an average of 23 days.

Division Highlights

- **Liquidity Monitoring:** Due to the recent failure of Silicon Valley Bank, Santa Clara, California and Signature Bank, New York, New York, the B&T division intensified monitoring the liquidity posture of Texas state-chartered banks. This monitoring includes contacting banks about their liquidity positions, including obtaining real time information on liquidity and deposit trends.
- **Interest Rates:** The Department continues to monitor the rapid rise in interest rates and its impact on inflation and the resulting risk to the banking industry.
- **Special Operations and Conferences:**
 - On February 6, 2023, Chief IT Security Examiner Ruth Norris represented the Department as a regulatory panelist at the Texas Business Association (TBA) IT and Security Forum in Dallas, Texas.
 - On February 8, 2023, Review Examiner (RE) Jared Whitson represented the Department as a regulatory panelist at the TBA Lending School in Austin, Texas.
 - On February 15, 2023, Commissioner Charles G. Cooper, Deputy Commissioner Wendy Rodriguez, Deputy General Counsel (GC) Marcus Adams, Director of Bank and Trust Supervision Dan Frasier, and RE Whitson represented the Department at the Independent Bankers Association of Texas (IBAT) Community Day at the Capitol at the Hilton Garden Inn University/Capitol District in Austin, Texas.
 - On February 16, 2023, Director of IT Security Examinations Phillip Hinkle represented the Department as a speaker at the TBA Tech Conference in San Antonio, Texas.
 - On February 21, 2023, Chief IT Examiner Norris represented the Department as a presenter at the InfraGard Financial Services CSC Meeting in Houston, Texas.
 - Beginning on March 6, 2023, Commissioner Cooper, Regional Director (RD) Tom Susany, Director of IT Security Hinkle, and Central Point of Contact (CPC) Jeff Gerlach represented the Department at the Conference of State Bank Supervision (CSBS) Large Bank Supervision Forum in Dallas, Texas. CPC Gerlach was a speaker on “Best Practices” in Large Bank Supervision, and Director Hinkle was a speaker on “Cyber Threats” in Large Bank Supervision.
 - Beginning on March 22, 2023, Commissioner Cooper, Deputy Commissioner Rodriguez, RD Susany, Deputy GC Adams, and Director of Non-Depository Supervision Jesse Saucillo represented the Department at the CSBS District IV Spring meeting in Dallas, Texas.
 - On March 28, 2023, Director of IT Security Hinkle represented (virtually) the Department as a speaker at the CSBS District 1 Meeting to discuss “Ransomware Threats.”
 - Beginning March 29, 2023, RD David Reed represented the Department at the 2023 Agriculture and Rural Affairs Conference in Fort Worth, Texas.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

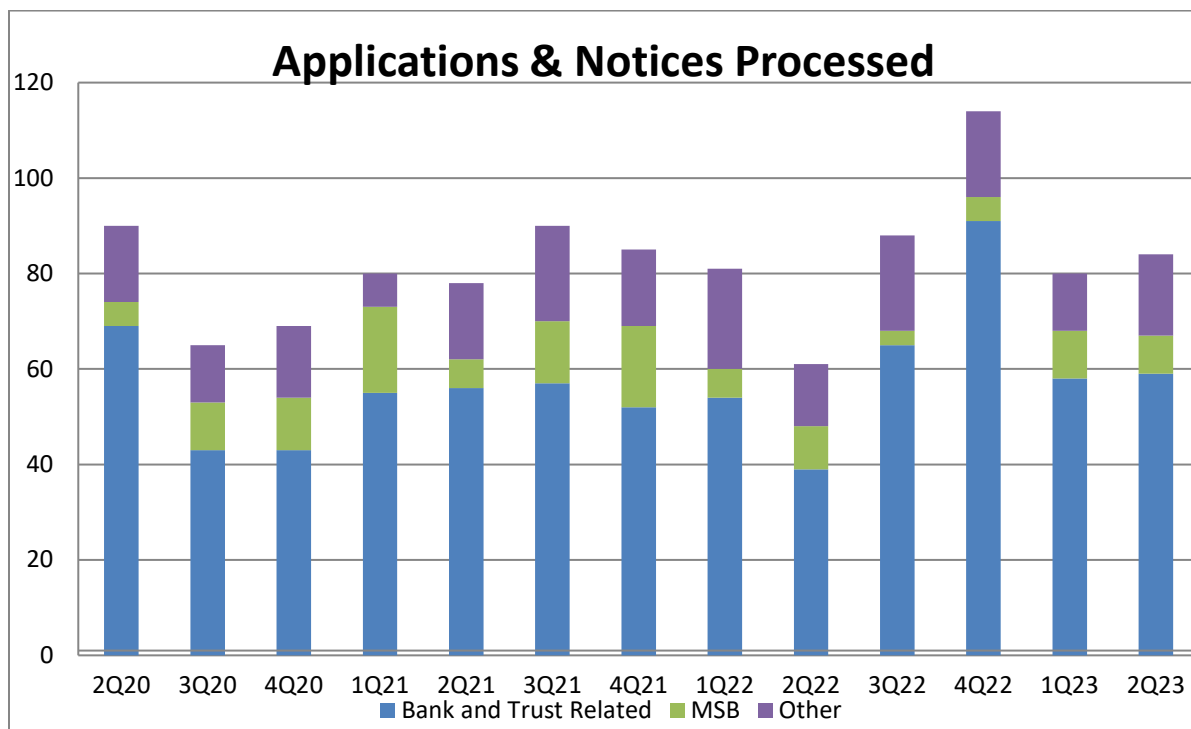
www.dob.texas.gov

To: Finance Commission Members

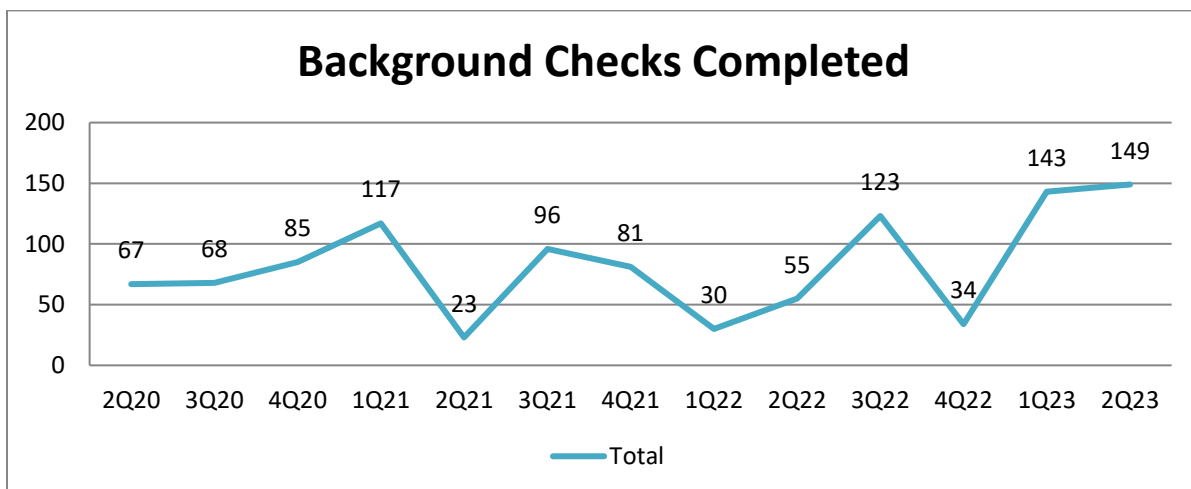
From: Mark Largent, Director of Corporate Activities

Date: April 5, 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 March 31, 2023)
Bank Related	21
Trust Companies	6
Money Services Business (MSB)	53
Others	2
Totals	82

Division Highlights

- Application volume was similar compared to the level reported at the last Finance Commission meeting. Compared to our last report, the Corporate Division's filings under review at month-end by category type changed by:
 - Bank related increased 3 (17%)
 - Trust company increased 1 (20%)
 - MSB related decreased 3 (5%)
 - Other decreased 3 (60%)
- Significant Filings:
 - TXN Bank, National Association, Hondo, Texas, has applied to convert to a Texas state bank charter under the name of TXN Bank [estimated gain in state banking assets of approximately \$608 million].
- In light of recent staffing changes and internal audit findings, the Corporate Division is currently reviewing and enhancing several processes and procedures as well as improving information reporting. The goal is to have these changes implemented by April 30, 2023.
- Charter, Conversion, and Merger Activity: Since the last report to the Finance Commission, the following transactions have consummated:
 - *Banks*
 - Vista Bank, Dallas, Texas, completed its merger with Charis Bank, Justin, Texas [no change in state banking assets].
 - *Trust Companies*
 - None.



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: Jesus "Jesse" Saucillo, Director of Non-Depository Supervision
Date: April 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	195	\$314.7				
Prepaid Funeral Contract (PFC)	335	\$4.6	336	\$4.6	337	\$4.7				
Perpetual Care Cemeteries (PCC)	244	\$435.6*	243	\$438.9*	243	\$440.8*				
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a				
Examinations Performed										
MSB	91		29		19					
MSB Limited Scope	1		1		1					
MSB Accepted other State	16		0		0					
PFC	223		39		69					
PFC Limited Scope	1		1		0					
PCC	152		45		31					
PCC Limited Scope	2		0		0					
Ratings (# / %) Assigned to All Regulated Entities										
1	294	39.10%	292	38.57%	297	39.18%				
2	401	53.32%	410	54.16%	403	53.17%				
3	49	6.52%	48	6.34%	49	6.46%				
4 & 5	8	1.06%	7	0.93%	9	1.19%				
Noncompliance with Examination Priorities (Past Due)										
MSB	25		16		16					
PFC	1		11		4					
PCC	3		5		3					

NOTES:

Limited scope examinations do not receive a rating.

* PCC \$ amounts reflected in the millions.

Examination Activities

Examinations of NDS licensed entities continue to be conducted with a focus of being on-site. Approximately 90% of the examinations performed by NDS in the second quarter of FY 2023 included an on-site component review. There is also an increase in the number of on-site examinations of out-of-state domiciled entities by other state MSB regulators, resulting in a hybrid approach for most coordinated multi-state examinations. The performance of off-site examinations is limited to those license entities with a low risk profile and/or other mitigating factors, such as travel coordination with other state regulators. The division's ability to effectively coordinate the performance of examinations enabled NDS to meet all performance measures as of the second quarter of fiscal year 2023. Below is additional information regarding the past due examinations reflected on the previous page.

- Of the sixteen past due MSB examinations, fourteen examinations were delayed so that they can be conducted in coordination with other MSB state regulators as part of a nationwide network multi-state examination process. Three of the past due MSB examinations were conducted in March 2023 and ten examinations are scheduled to be completed before the end of May 2023. The remaining three past due examinations will be completed in the summer of 2023 as part of network multi-state examinations.
- One of the four past due PFC examinations was conducted in March 2023 and the remaining three past due examinations are scheduled to be completed before the end of May 2023. Furthermore, two of the three past due PCC examinations were conducted in March 2023 and the remaining one past due examination is scheduled to be conducted in April 2023.
- The division continues to be negatively impacted by the PFC/PCC Financial Examiner vacancies. While one of the vacancies was filled in March 2023, a PFC/PCC Financial Examiner resigned effective April 2023. As a result, two ongoing vacancies exist. Furthermore, two MSB examiners hired in 2022 continue to be in the training phase and are expected to complete their initial training in the summer of 2023. As a result of these ongoing issues, the division anticipates an increase in past due examinations for the remainder of fiscal year 2023.
- As it relates to past due examinations, the division continues to closely monitor 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. The division also performs off-site monitoring of licensed entities, including the quarterly reviews of MSB call reports.

Division Activities

- NDS continues to participate in various multi-state MSB work groups and committees to coordinate regulatory outreach to entities of regulatory concern. For example, recent matters impacting MSBs offering cryptocurrency products are discussed on an ongoing basis with members of the Multi-state MSB Examination Taskforce (MMET), MSB Enforcement Action Taskforce, and Money Transmitters Regulators Association (MTRA). Department personnel are members of these committees and work with other state regulators to identify and monitor troubled institutions and coordinate actions and responses to safety and soundness concerns.
- The division continues to monitor and take actions on licensed and unlicensed entities. Since last summer, Departmental resources have been assigned to address ongoing issues regarding companies that offer cryptocurrencies to Texas consumers. During this reporting period, NDS issued regulatory enforcement actions against two entities offering and

conducting MSB activities in violation of applicable rules and regulations to protect the rights and interests of Texas consumers.

- Department staff, including Director Saucillo, participated in the CSBS District IV Meeting on March 22-23, 2023, in Dallas, Texas. Several roundtable discussions were held concerning agency operations, staffing challenges and recent events impacting state banking regulators. Discussions regarding events impacting the non-depository industry were also discussed with District IV banking state regulators.
- The division has been assisting the Legal Division with the introduction of SB 895 in the 88th Texas Legislature, regarding the Money Transmission Modernization Act (MTMA). The MTMA is designed to establish nationwide common standards and requirements for money transmission designed to harmonize regulations across state lines. The Department is also monitoring other legislation that may potentially impact PFC/PCC license holders.



TEXAS DEPARTMENT OF BANKING

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

Memorandum

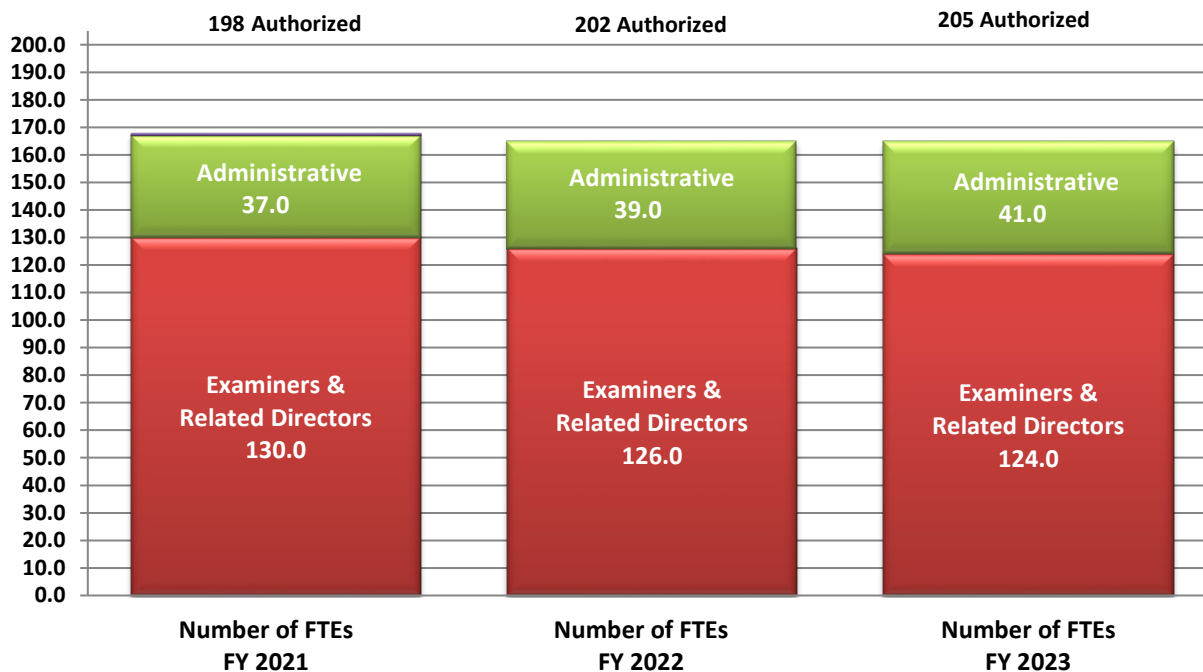
To: Finance Commission Members
From: Lori Wright, Director of Human Resources
Date: April 1, 2023
Subject: Summary of the Human Resources Division Activities

Active Postings				
Number of Positions	Position	Division	Status	Activities
1	Accountant V	Administrative Services	Open Until Filled	Recruiting
1	Legal Assistant III	Legal	Closes April 10, 2023	
2	Compliance Analyst I- II Consumer Assistance Specialist	DSS	Open Until Filled	Recruiting
1	Financial Examiner IV-VI Financial Analyst – Training Coordinator	DSS	Open Until Filled	Recruiting
1	Financial Examiner I-II (PFC/PCC)	NDS	Closes April 6, 2023	Recruiting
1	Financial Examiner VI (MSB Analyst)	NDS	Closes April 13, 2023	Recruiting
10	Financial Examiner I - Assistant Bank Examiner	Bank and Trust	Closed March 6, 2023	Interviewing
1	Financial Examiner I - Assistant Trust Examiner	Bank and Trust	Closed March 6, 2023	Interviewing
2	Financial Examiner I - Assistant IT Examiner	Bank and Trust	Closed March 6, 2023	Interviewing
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

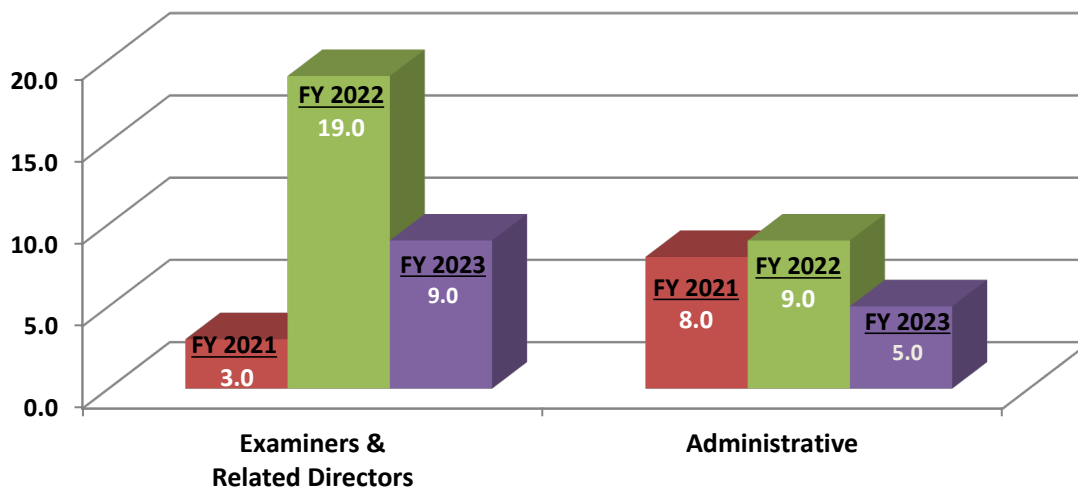
Division Activities

- Performing User Acceptance Testing - CAPPS Recruit implementation.
- Analyzing results of 2023 Internal Employee Satisfaction Survey.
- Department staff attended 14 university career fairs.
- Administrative Memorandum (AM)
 - AM 2031 – Delegation of Authority
 - AM 2002 – Equal Employment Opportunity, Non-Discrimination, and Sexual Harassment Policy.

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

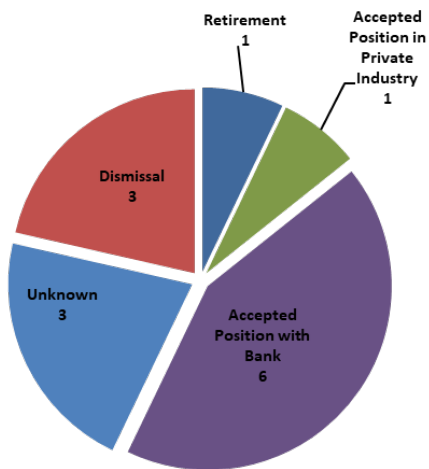


New Hire Data for Fiscal Years 2021, 2022 and 2023

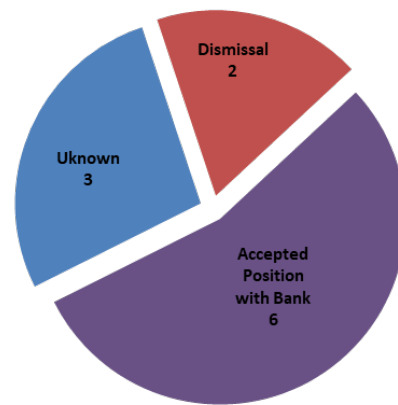


FY 2023 Employee Turnover Reasons

All Employees
14 Resignations



Financial Examiners Only
11 Resignations



As of 03/31/2023

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%	
Quarter 2	93	28	53	56.99%	*
FY 2023, Quarter 2 - The number of bank examinations is above the target due to performing more joint examinations than projected.					
2. # Foreign/Trust/IT Examinations Performed					
Quarter 1	227	54	54	23.79%	
Quarter 2	227	65	119	52.42%	
1-2-1 Non-Bank Examination					
1. # NDS Licensees Examined					
Quarter 1	500	115	115	23.00%	
Quarter 2	500	120	235	47.00%	
1-3-1 Application Processing					
1. # License Applications Completed					
Quarter 1	358	87	87	24.30%	
Quarter 2	358	95	182	50.84%	



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

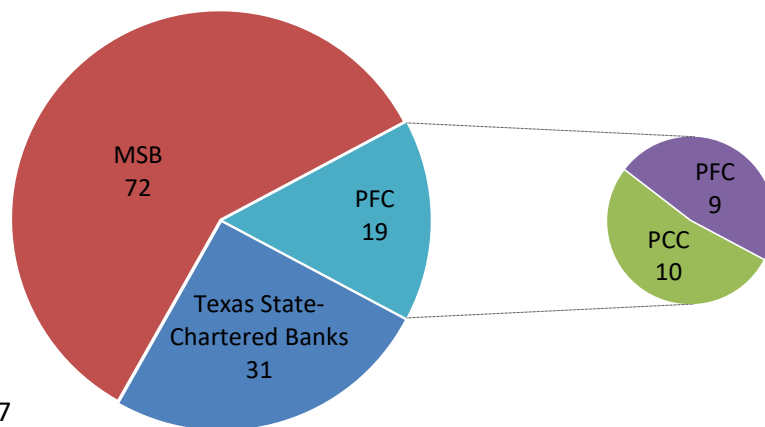
2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

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

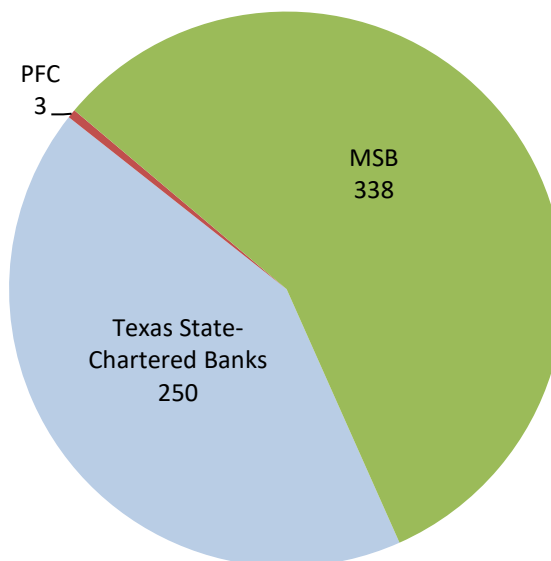
Jurisdictional Written Complaints September 2022-February 2023



Recoveries = \$81,771.77

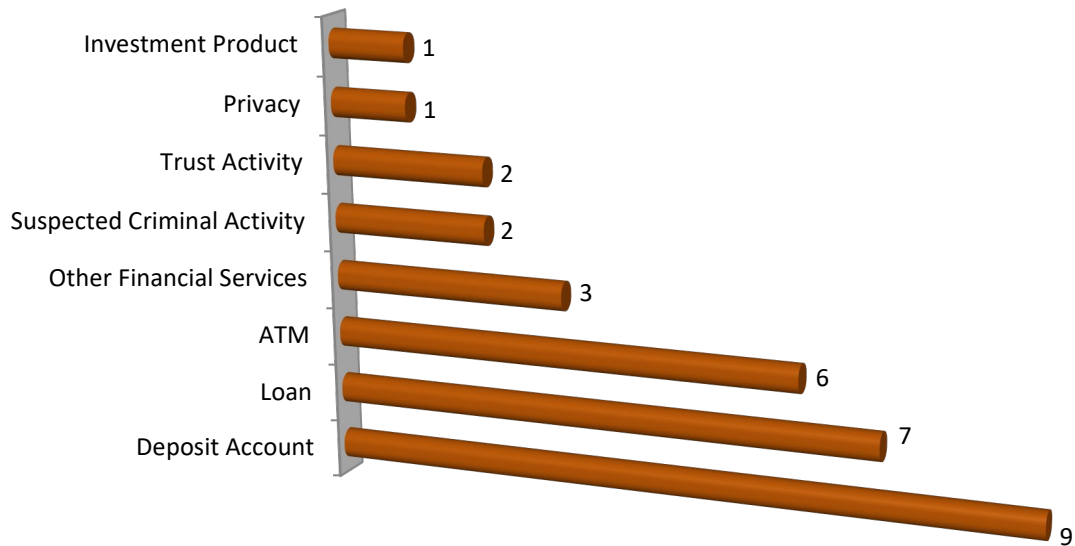
Total = 122

Inquiries on Jurisdictional Entities September 2022-February 2023



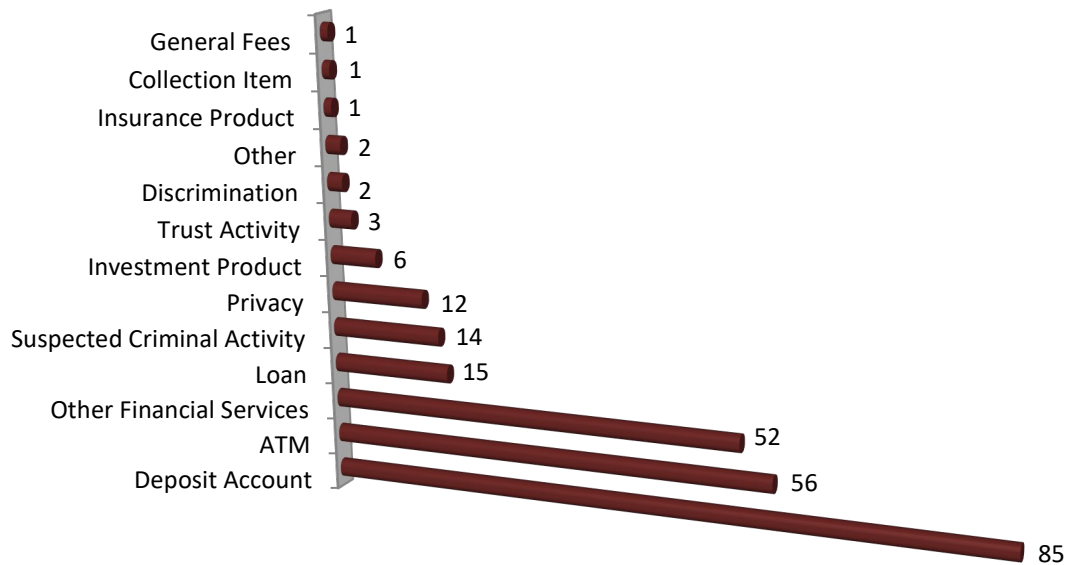
Total = 591

**State-Chartered Banks and Trust Companies
Written Complaints by Type
September 2022-February 2023**



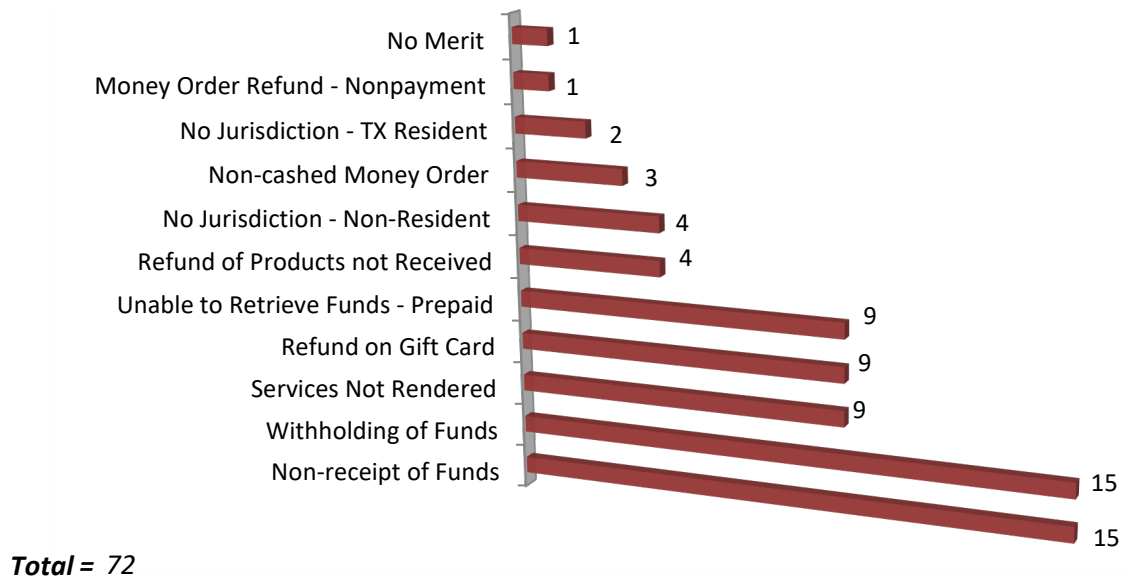
Total = 31

**State-Chartered Banks and Trust Companies
Inquiries by Type
September 2022-February 2023**

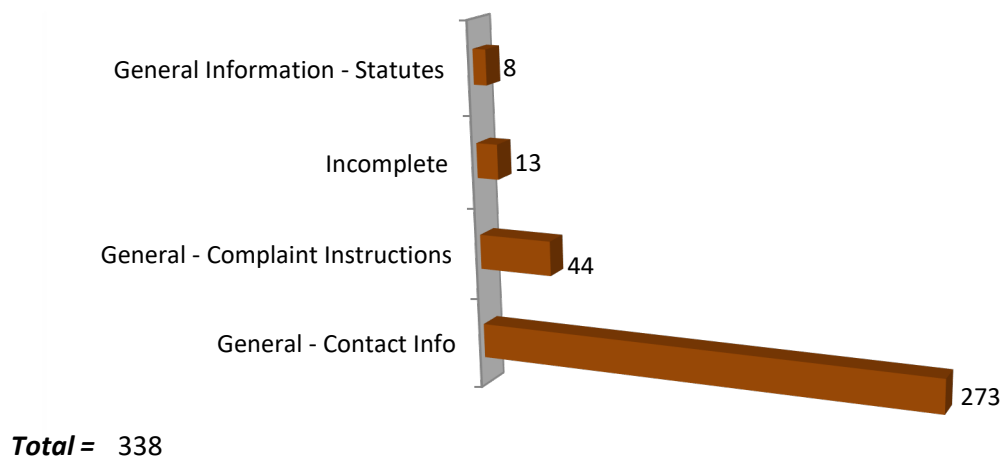


Total = 250

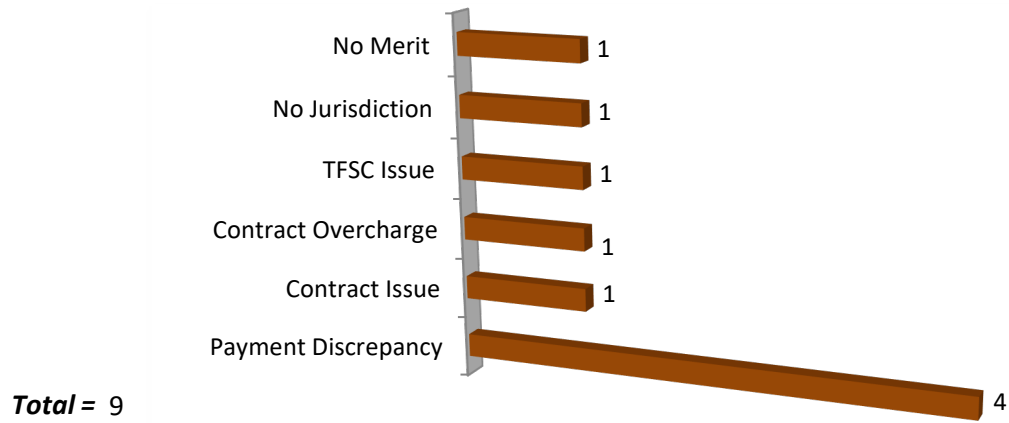
**Money Services Businesses
Written Complaints by Type
September 2022-February 2023**



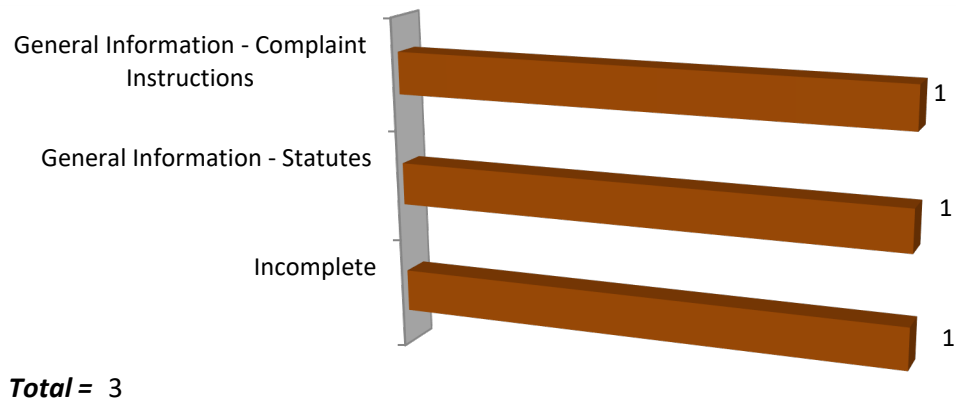
**Money Services Businesses
Inquiries by Type
September 2022-February 2023**



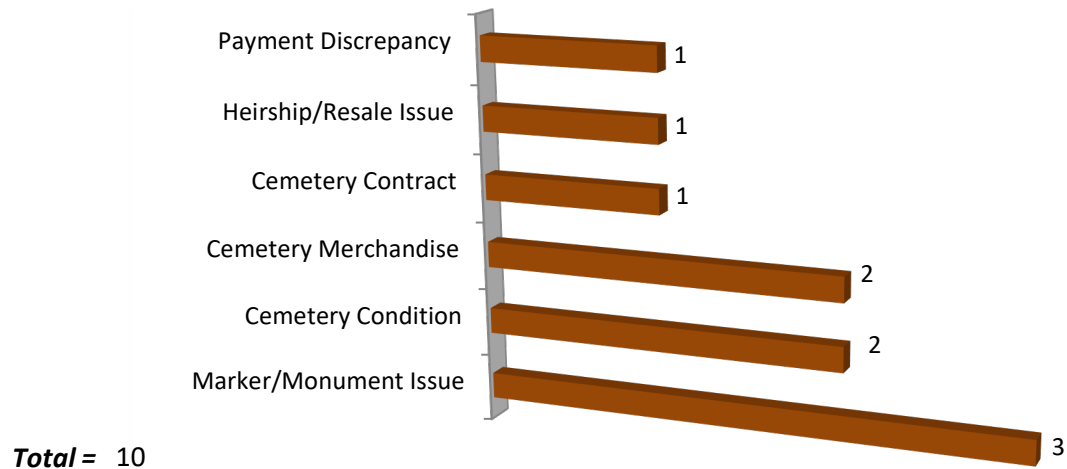
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2022-February 2023**



**Prepaid Funeral Contract Sellers
Inquiries by Type
September 2022-February 2023**



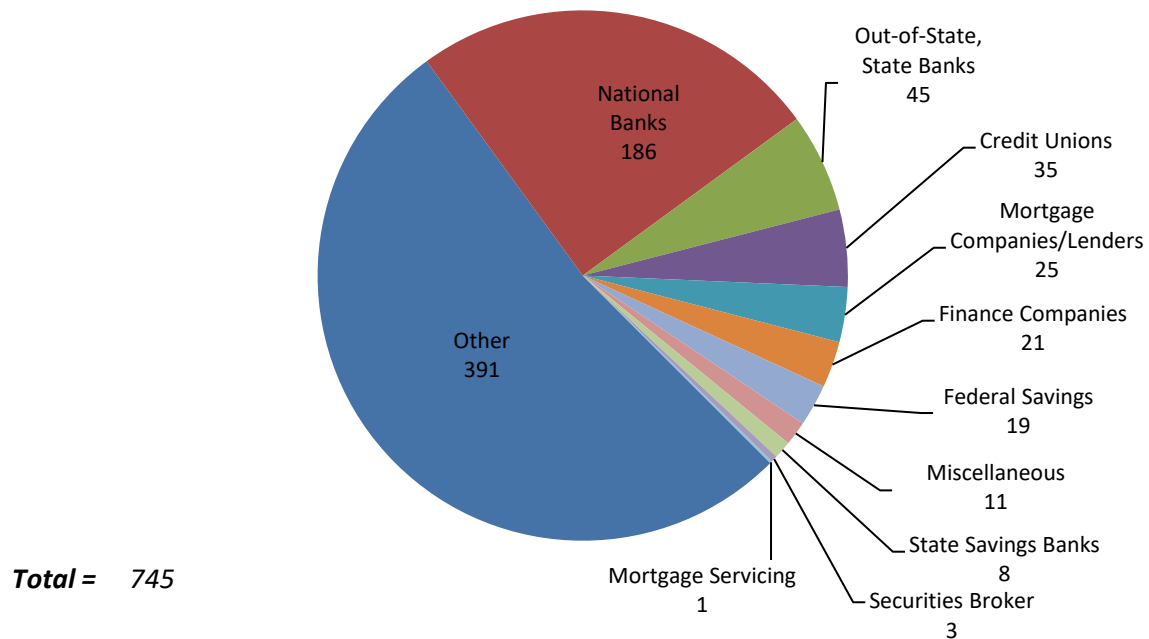
**Perpetual Care Cemeteries
Written Complaints by Type
September 2022-February 2023**



**Perpetual Care Cemeteries
Inquiries by Type
September 2022-February 2023**

No inquiries were reported during this period.

Complaints and Inquiries Against Non-Jurisdictional Entities September 2022-February 2023



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	12	-	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	-	-
Number of Written Complaints Resolved	14	17	-	-
Trust				
Avg. Number of Days to Close a Written Complaint	N/A	N/A	-	-
Percentage of Written Complaints Resolved Within 90 days	N/A	N/A	-	-
Number of Written Complaints Resolved	N/A	N/A	-	-
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	21	19	-	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	-	-
Number of Written Complaints Resolved	7	12	-	-
MSB				
Avg. Number of Days to Close a Written Complaint	26	21	-	-
Percentage of Written Complaints Resolved Within 90 days	100%	100%	-	-
Number of Written Complaints Resolved	39	33	-	-

Closed Account Notification System (CANS) Activity

January 1, 2020 – March 31, 2023

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	184	321
Texas State-Chartered Savings Banks	23	52
Federal Savings Banks	10	0
State Credit Unions	135	567
Federal Credit Unions	229	462
National Banks	171	97
Out-of-State State-Chartered Banks	12	59
Out-of-State National Banks	6	0
Total	770	1,558

Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

	FY 2020	FY 2021	FY 2022	FY 2023 As of 03/31/2023
I. General Knowledge	4*	6	5	1
II. Loan Analysis	7	1	3	2
III. Panel	10	3	3	4
IV. Test Bank	7	5	3	4
Total FE3	15	17	13	15

Promotions

Commissioned Examiners	7	5	3	4
-------------------------------	---	---	---	---

**Includes a FE V Credit Specialist*

Other Divisional Items:

88th Legislative Session

- The Texas Legislature filed 8,153 bills and joint resolutions by the bill filing deadline on March 10, 2023. House and Senate committee hearings are ongoing, and the Department is monitoring the progress of over 450 of these bills. Bill tracking reports are updated weekly and posted on the Department's intranet (DOBE) to help keep agency staff informed of legislative activities.

Examiner Bulletins (XB)

- XB 2023-02 CML – Guidelines for Procedures and Work Paper Documentation for Commercial Examinations (March)
- XB 2023-03 TR – Guidelines for Procedures and Work Paper Documentation for Trust Examinations (March)
- XB 2023-04 IT – Guidelines for Procedures and Work Paper Documentation for Information Technology Examinations (March)

Personnel and Policies Manual Updates

- **Personnel Manual**
 - Section 14 – Added Section 14-22 incorporate Governor Greg Abbott’s statewide model security plan for Texas state agencies to address vulnerabilities presented by the use of TikTok and other software on personal and state-issued devices (February).
- **Revised Administrative Memorandums (AM):**
 - AM 2022 – Institution Review Process for State-Chartered Banks (February)
 - AM 2013 – Delegation of Authority (February)

Training

- In February, a committee was established to develop a new training program to offer a structured training regimen for new financial examiners. The program will be governed by a training development committee and managed by key personnel. A presentation to stakeholders is anticipated to gather additional feedback to finalize the program for the next hiring class.

Rate the Department

- The annual Rate the Department survey closed on February 10, 2023, and the survey results are available on the Department’s [website](#). The survey is designed to gather feedback regarding a regulated entities experiencing working and communicating with Department personnel over the previous 12 months.

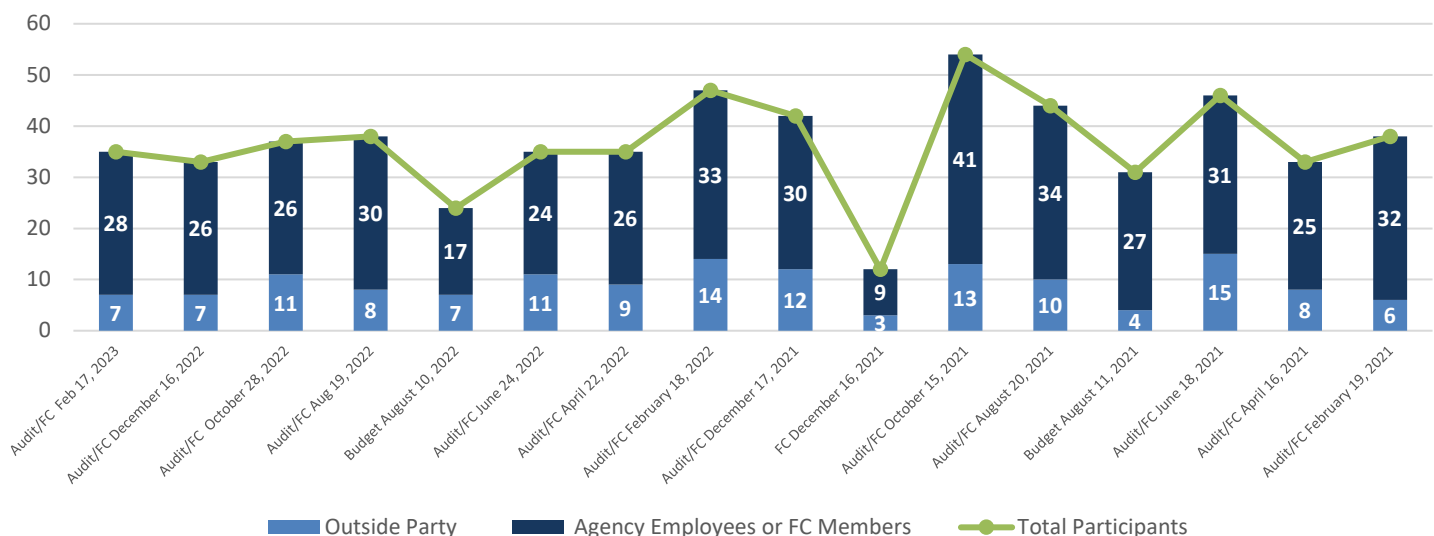
Publications

- The March 2023 edition of the [Condition of the Texas State Banking System](#) report is available with financial data as of December 31, 2022.

Financial Education

- There were 43 participants who attended a financial education webinar titled “Making a Streetwise Vehicle Purchase” that was jointly presented by the Texas Department of Banking and the Office of the Consumer Credit Commissioner on March 22, 2023.

Finance Commission Webcast Historical Data





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

512-475-1300 / 877-276-5554

www.dob.texas.gov

Memorandum

To: Finance Commission Members
From: Catherine Reyer, General Counsel
Date: April 3, 2023
RE: Legal Division Update

Litigation

Cornelius Campbell Burgess v. 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 (OAG) filed an appeal of this case in the Texas Third Court of Appeals.

Contested Case Hearings

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. 451-23-10251. 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 was heard in a remote proceeding before SOAH on February 24. A proposal for decision is pending.

Banking Commissioner of Texas v. SCI Texas Funeral Services, LLC, Prosper, Texas; Docket No. 451-23-12409.NDS. This case was brought to contest the Department's denial of an application for a certificate of authority to operate a perpetual care cemetery. Case was set for hearing at SOAH on March 20, 2023. Parties agreed to continue the hearing and participated in a prehearing conference on that date instead. On March 29, we filed a motion for summary disposition.

Orders Issued February 1, 2023 – March 31, 2023

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

Bank and Trust Supervision

- Written Agreement dated February 14, 2023; Riverbend Financial Corporation (joint with FRB Dallas)

Non-Depository Supervision

- Consent Order dated February 8, 2023; Smart Communications Holdings, Inc., Seminole, Florida
- Consent Order dated March 3, 2023; Nexo Financial LLC, George Town, Cayman Islands

Public Information Requests

From February 1, 2023, through March 31, 2023, staff received and responded to 19 requests for public information addressed to the Department of Banking and received nine inquiries from the “Ask a Question” feature. During the same period, we received and responded to two public information requests or inquiries addressed to the Finance Commission. One request for OAG opinion was submitted during this period.

Gifts

Commissioner Cooper served as a speaker, moderator, and panelist at the CSBS Large Bank Supervision Forum in Dallas, Texas, on March 6-8, 2023. The Conference of State Bank Supervisors (CSBS) covered the Commissioner’s hotel expenses in the amount of \$276.42.

FY 2023 Quarterly Order Activity

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

TRUST COMPANY				
Consent Order	0	0	0	0
Cease & Desist	0	0	0	0
Supervision	0	0	0	0
Prohibition	0	0	0	0
Total	0	0	0	0

MONEY SERVICES BUSINESS				
Consent Order	3	4	0	0
Cease & Desist	2	0	0	0
Final Order after hearing	0	0	0	0
Total	5	4	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 (June):

7 TAC, Chapters 9, 10, 12 and 25 Rule reviews

C.

**Office of Consumer Credit
Commissioner**

This page left blank intentionally.



Consumer Protection and Consumer Assistance Report

The OCCC's FY 2023 examination program is approximately 8% under target as of the end of the second quarter. Exam production numbers were impacted by the significant focus in on-the-job field training for four new examiners with less than one year experience. Additionally, a large enterprise CAB exam that began in February had to be postponed due to issues at the licensee. This exam is scheduled to restart June 1. The department pivoted and identified another large CAB examination which began Monday, April 3 to be completed by June 1. The department's ability to rapidly adapt - identify, plan, organize, and execute an alternate large CAB examination on short notice was possible because of the investment in and commitment to training, project management approaches, and the involvement of additional experienced examiners in leadership roles.

The department continues to believe that pro-rata targets will be met as larger examinations are completed and newly certified examiners begin contributing to exam production. Fieldwork on a large Property Tax Lender examination that began December 5, 2022, has been completed. The examination report will be issued before the end of April.

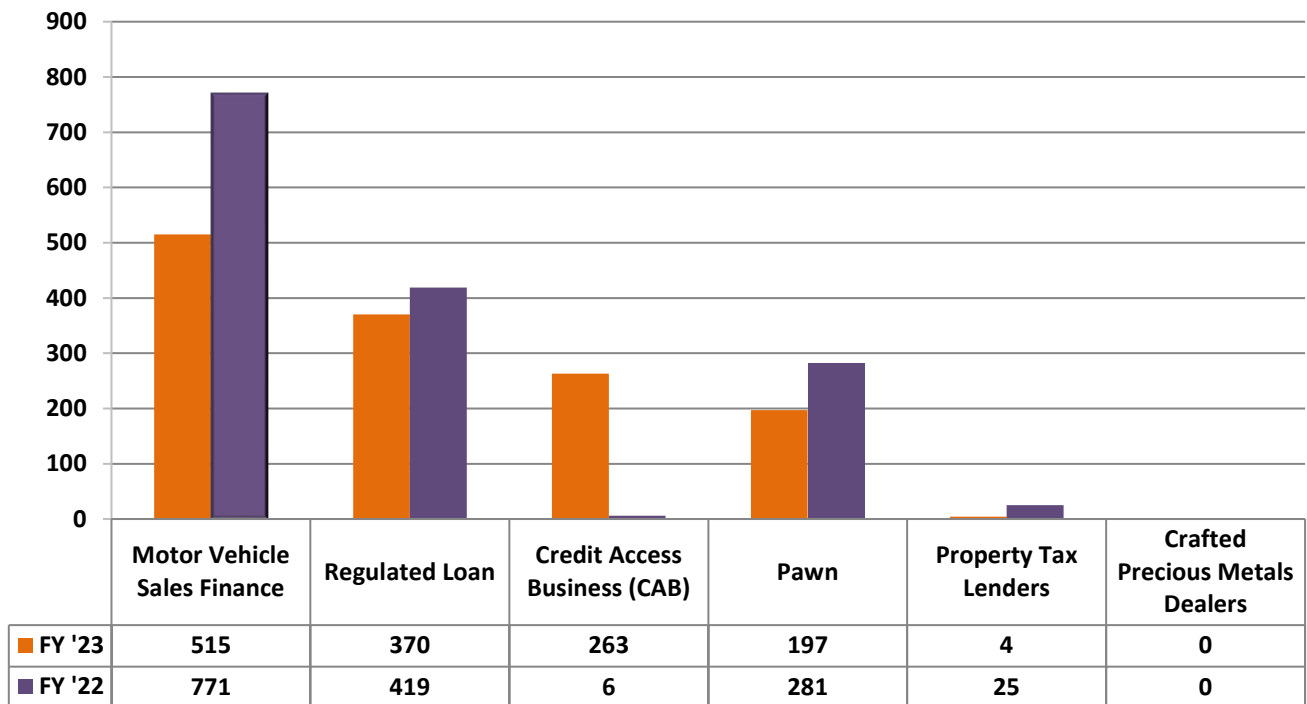
An out of state exam commences fieldwork on April 17, 2023. This exam covers both motor vehicle sales finance and regulated consumer lending licenses. A second motor vehicle sales finance out of state exam is confirmed with fieldwork beginning the week of May 1, 2023. Work has begun on a multi-state auto finance exam focused on a larger participant in this industry sector. The CFPB is participating in this exam. 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 Multi-State Mortgage Committee (MMC) has begun initial planning for a multi-state mortgage exam that is scheduled to begin in June. As noted in the December briefing, OCCC participation in these exams, though important in the larger context of networked supervision and enforcement, will not contribute to examination completion this fiscal year.

Examiner training and development remains a high priority focus. Two examiners attained certification in Texas Finance Code Chapter 371 and Texas Finance Code Chapter 342-F the week of March 27, 2023. Two tenured Financial Examiner II's attained certification in Texas Finance Code, Chapter 342-E transactions the week of April 3, 2023. Two examiners will be certified Texas Finance Code, Chapter 348, Motor Vehicle Sales Finance Examinations the week of April 9, 2023.

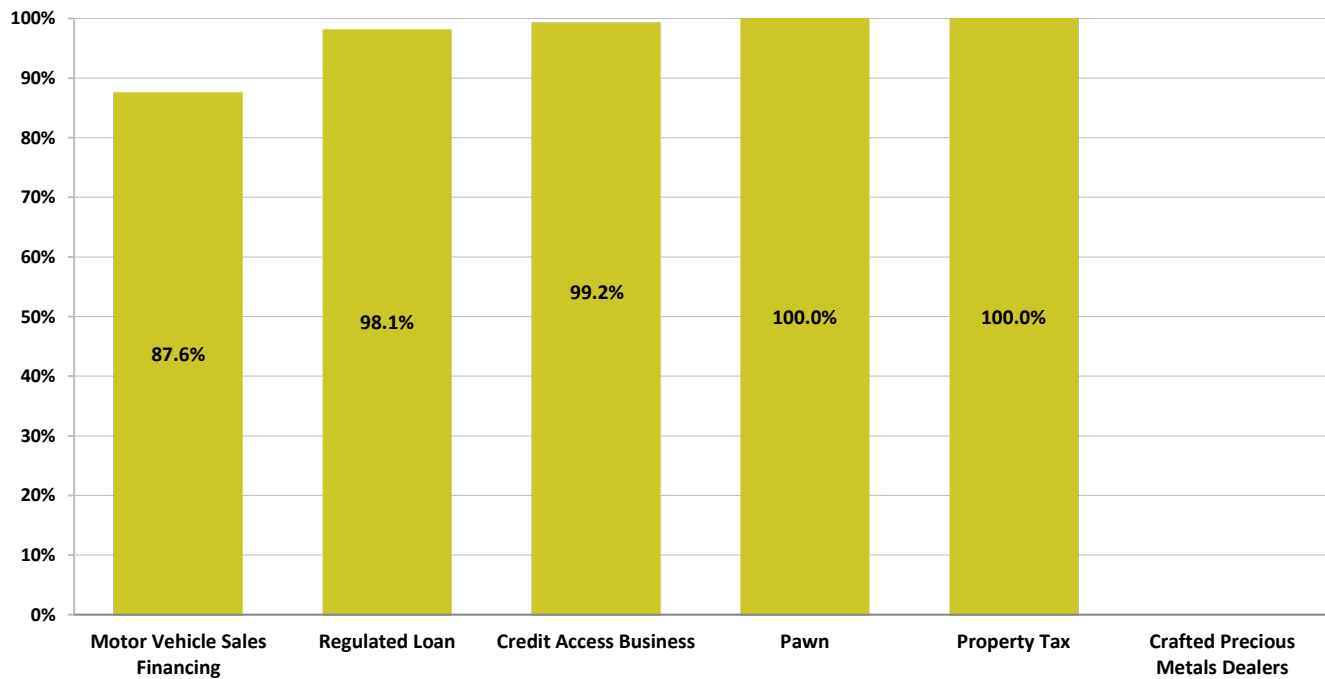
CAB training classes are scheduled in May. The plan is to accomplish certification for the next group of examiners needing CAB certifications during the large CAB exam rescheduled for a June start. Plans to form a new examiner class of four examiners beginning June 1, 2023 are in process. Recruiting remains a challenge.

Examinations Conducted: Sept - Feb Fiscal Year Comparison

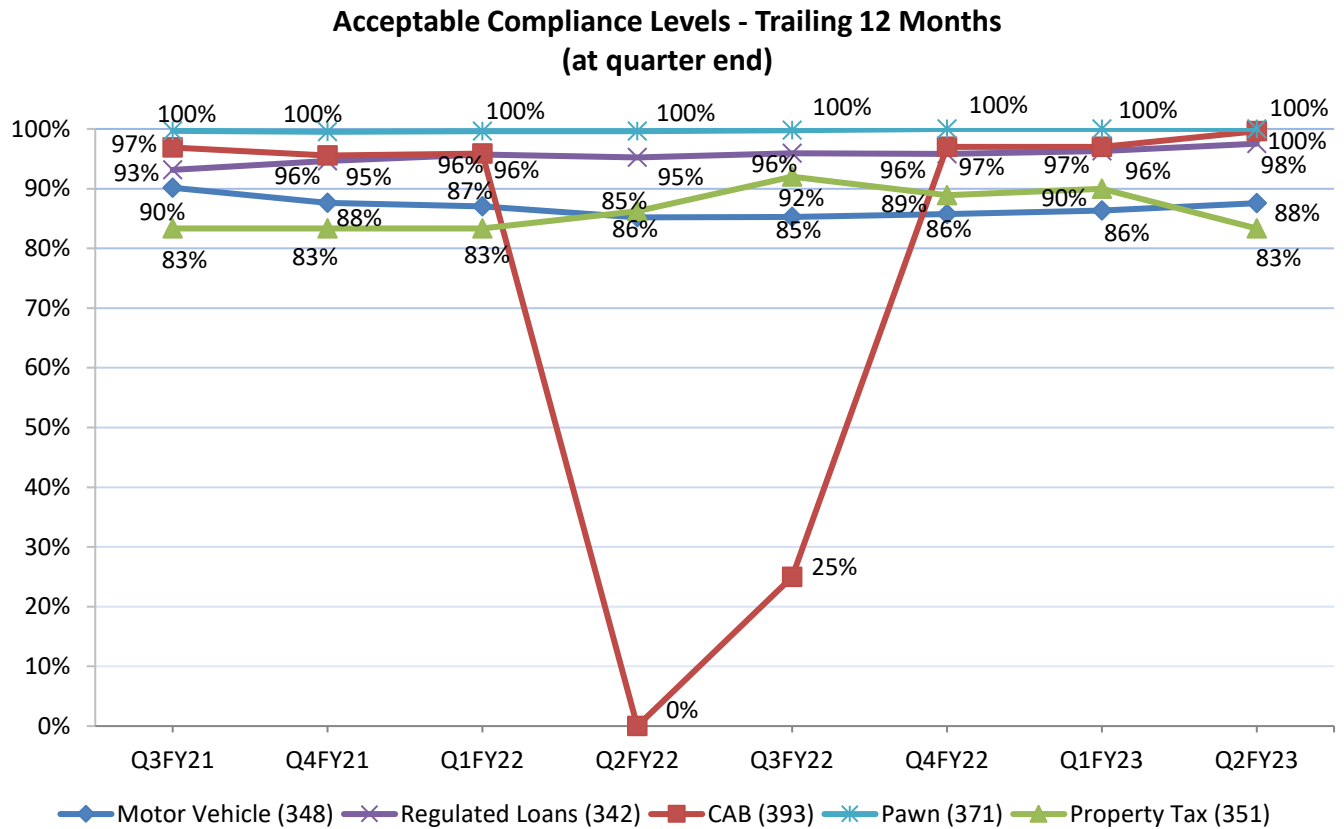


During the reporting period no Crafted Precious Metal examinations were conducted.

Acceptable Level of Compliance FY '23 (Sept 2022 - Feb 2023)

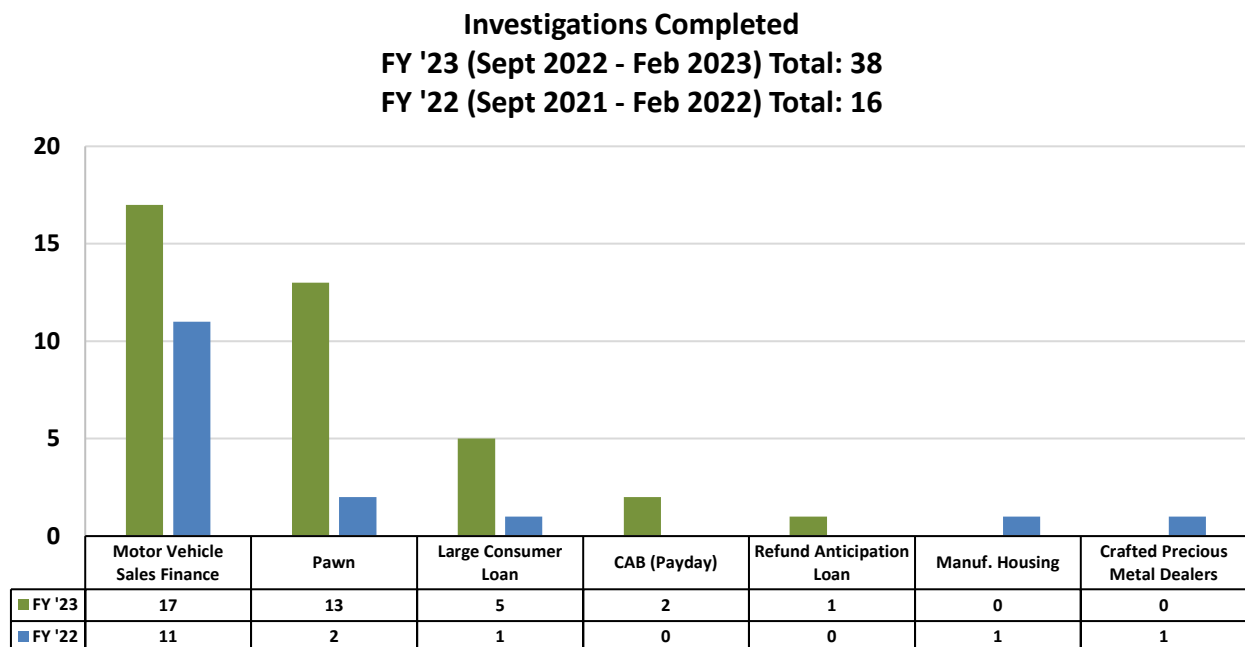


The following chart denotes the acceptable level of compliance on a trailing 12-month basis through the end of February 2023.



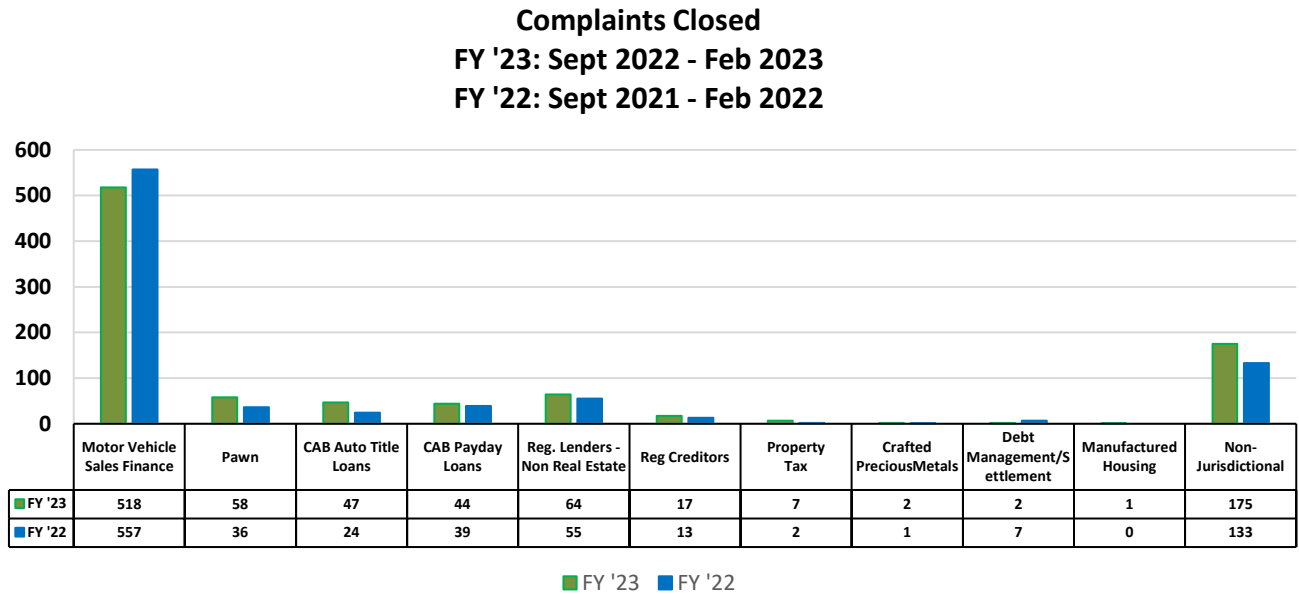
Investigations

For FY 2023 through February, the OCCC completed 38 investigations out of the annual goal of 75. Motor Vehicle Sales Finance issues comprise 45% of the overall number of completed investigations.

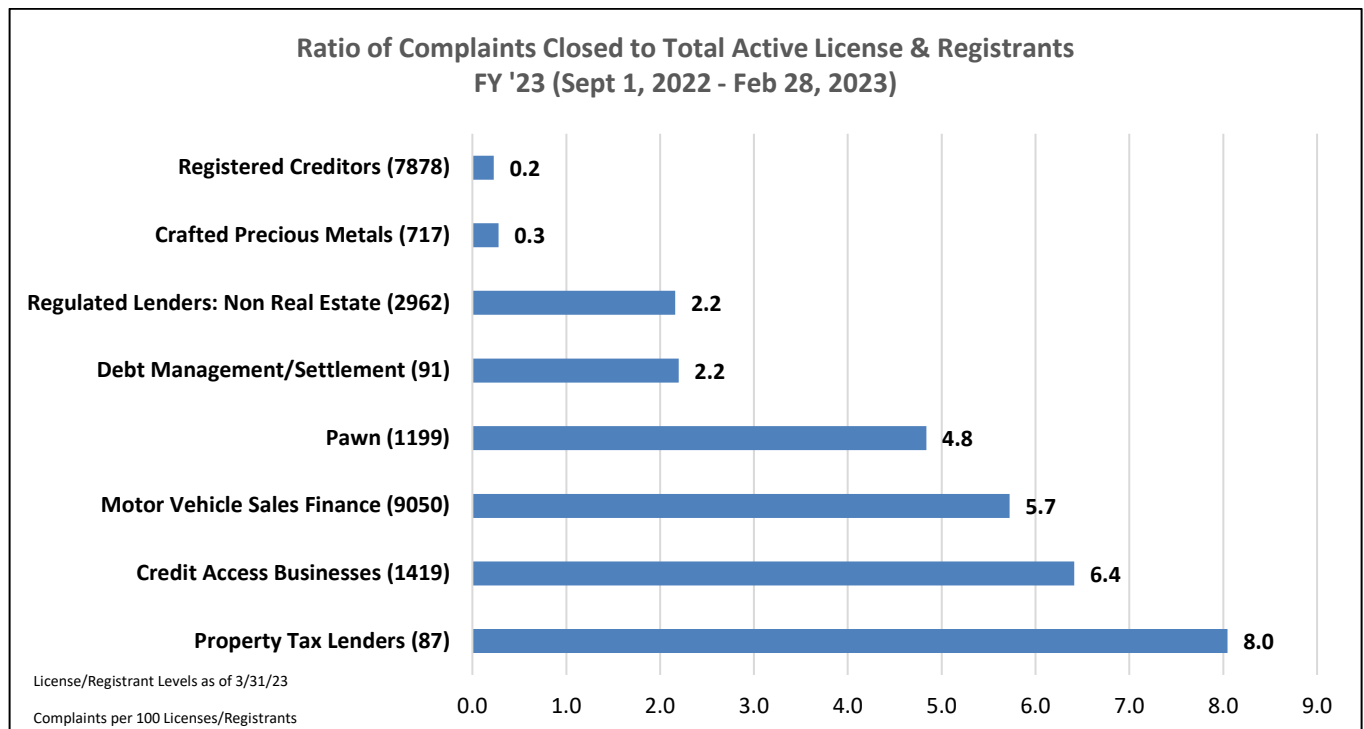


Consumer Assistance

During this reporting period, 935 complaints were closed, of which 175 were classified as non-jurisdictional. The top four areas of jurisdictional complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Credit Access Businesses (CAB), (3) Regulated Lenders Non-Real Estate, and (4) Pawn. MVSF complaints were the largest complaint category at 55.4%. The second largest category was CAB complaints at 9.7% collectively, separately these are 4.7% for payday loans and 5% for title loans. The third largest category came from Regulated Lenders Non-Real Estate at 6.8%. The fourth largest category was Pawnshops at 6.2%.



Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. For this reporting period, the highest ratio of complaints to active license/registrants is Property Tax Lenders, followed by Credit Access Businesses, Motor Vehicle Sales Finance, 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.



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	417	NA	NA
Business	0	0	NA	NA
Law Enforcement	0	1	NA	NA
State or Federal Agency	31	41	NA	NA
OSCC	2	1	NA	NA
Whistleblower	0	0	NA	NA
Other	0	0	NA	NA
Total	475	460	NA	NA

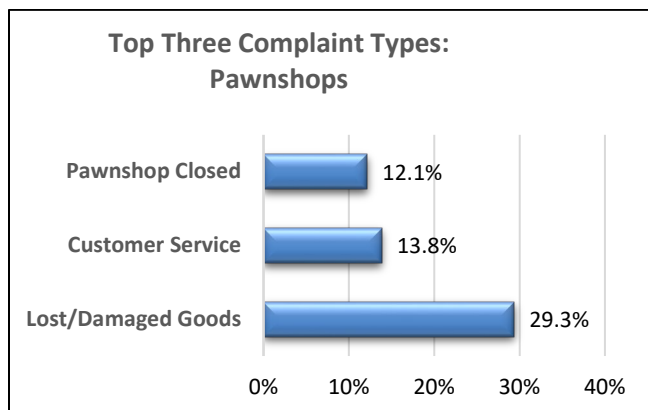
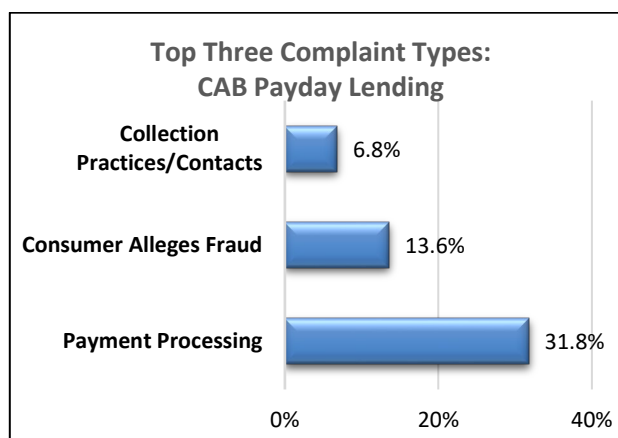
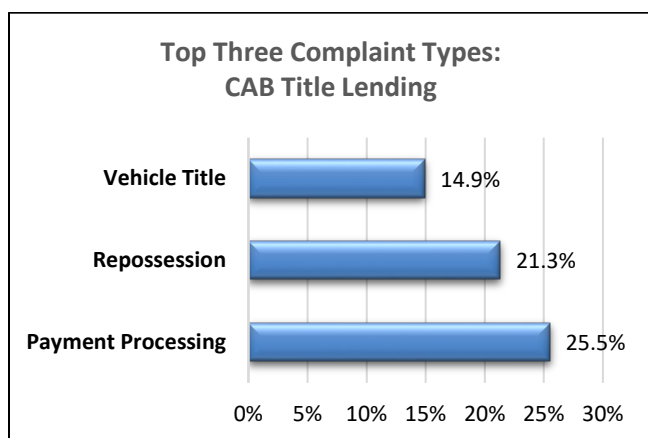
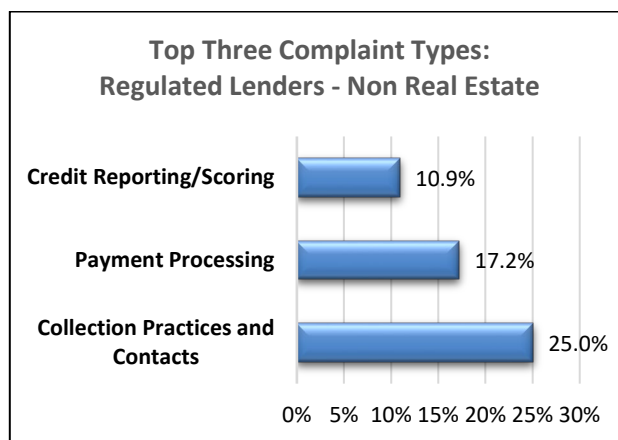
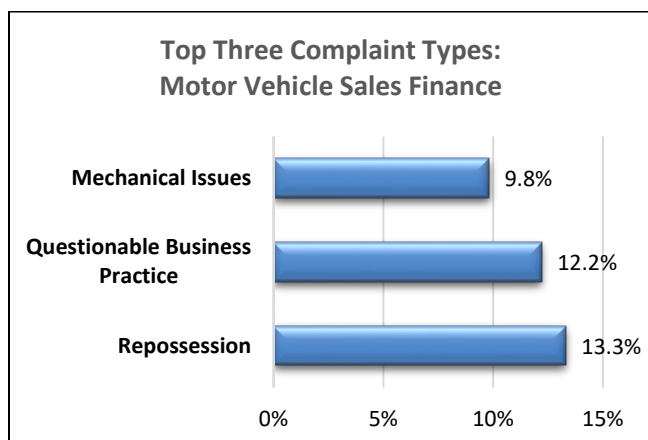
Table 2

Subjects	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Motor Vehicle Sales Finance	273	245	NA	NA
CAB Payday Loans	20	24	NA	NA
CAB Auto Title Loans	19	28	NA	NA
Reg. Lenders - Non Real Estate	33	31	NA	NA
Pawn	28	30	NA	NA
Registered Creditors	11	6	NA	NA
Crafted Precious Metal Dealers	0	2	NA	NA
Regulated Lenders - Real Estate	0	0	NA	NA
Manufactured Housing	0	1	NA	NA
Property Tax Lenders	4	3	NA	NA
Debt Management/Settlement	1	1	NA	NA
Refund Anticipation Loan	0	0	NA	NA
Non-Jurisdictional	86	89	NA	NA
Total	475	460	NA	NA

Table 3

Disposition	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Closed to Investigation	5	12	NA	NA
Closed to Legal	0	0	NA	NA
Closed -Action Taken	106	66	NA	NA
Closed -No Violation	145	176	NA	NA
Closed - Administratively	133	117	NA	NA
Close - Non-Jurisdictional	86	89	NA	NA
Total	475	460	NA	NA

The following charts represent the top three complaint areas per license type. In the MVSF chart, approximately half of the complaints in the *Questionable Business Practice* category relate to allegations that dealers will not accept outside financing. Complaints in this category continue to decline, down over five percent from April of 2022.



Production Targets and Priorities	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Percentage of Written Complaints Closed within 90 days	88.6%	90.8%	NA	NA
Average Number of Days to Close a Complaint	41.5	39.2	NA	NA
Number of Complaints Closed	475	460	NA	NA

CAB Reporting Update

Summaries of CAB reports through 2022 are available on the OCC website. Presented are selected statistics of year-end totals from both the Annual and Quarterly reports compared with previous years. In 2022, the number of CAB loans and refinances increased. Total customers increased 33%, while total amount of fees and total dollar amount loaned both increased around 20%. The dollar amount loaned by out-of-state licenses increased nearly 60% compared to last year. More information on repossessions and the type of loans made is provided in additional graphs.

Data Highlights (All Loan Types) Calendar Year	2022	2021	2020	2019	2018	2017
Number of Payday Loans and Refinances ¹	2,369,599	2,173,359	2,385,287	3,676,280	3,859,893	4,351,772
Number of Title Loans and Refinances ¹	747,797	706,806	805,739	1,074,630	1,107,258	1,059,411
Number of vehicles repossessed under all Auto Title Loans	42,905	39,569	34,629	42,878	37,777	32,347
Total Customers ²	1,462,323	1,101,031	1,016,820	1,611,367	1,505,212	1,499,599
Total \$ fees accrued on all transactions	\$1.79 B	\$1.49 B	\$1.39 B	\$2.03 B	\$1.86 B	\$1.76 B
Total \$ Loaned by All Licensees (in billions)	\$2.52 B	\$2.09 B	\$1.92 B	\$3.14 B	\$3.33 B	\$3.27 B
Total \$ Loaned by Out of State Licensees (in millions)	\$833 M	\$524 M	\$664 M	\$1005 M	\$851 M	\$839 M

Payday Loans Calendar Year	Single Installment			Multiple Installment		
	2022	2021	2020	2022	2021	2020
Average loan amount	\$502	\$498	\$459	\$615	\$569	\$607
Average fee per \$100 borrowed	\$27.24	\$24.72	\$23.32	\$123.85	\$127.03	\$142.66
Average original term (in days)	20	21	22	145	143	153
Average Fee Converted to a Daily Rate ³	1.37%	1.18%	1.08%	0.85%	0.89%	0.93%
Estimated transactions per borrower ⁴	4.3	5.0	4.9	1.6	1.8	1.9

Title Loans Calendar Year	Single Installment			Multiple Installment		
	2022	2021	2020	2022	2021	2020
Average loan amount	\$1,718	\$1,807	\$1,524	\$1,678	\$1,630	\$1,321
Average fee per \$100 borrowed	\$16.32	\$15.18	\$15.11	\$103.03	\$104.59	\$110.14
Average original term (in days)	31	31	30	163	161	158
Average Fee Converted to a Daily Rate ³	0.53%	0.50%	0.50%	0.63%	0.65%	0.70%
Estimated transactions per borrower ⁴	7.3	8.0	9.1	2.3	2.3	2.6

¹Number of loans and refinances are the sum of quarterly report #10F.

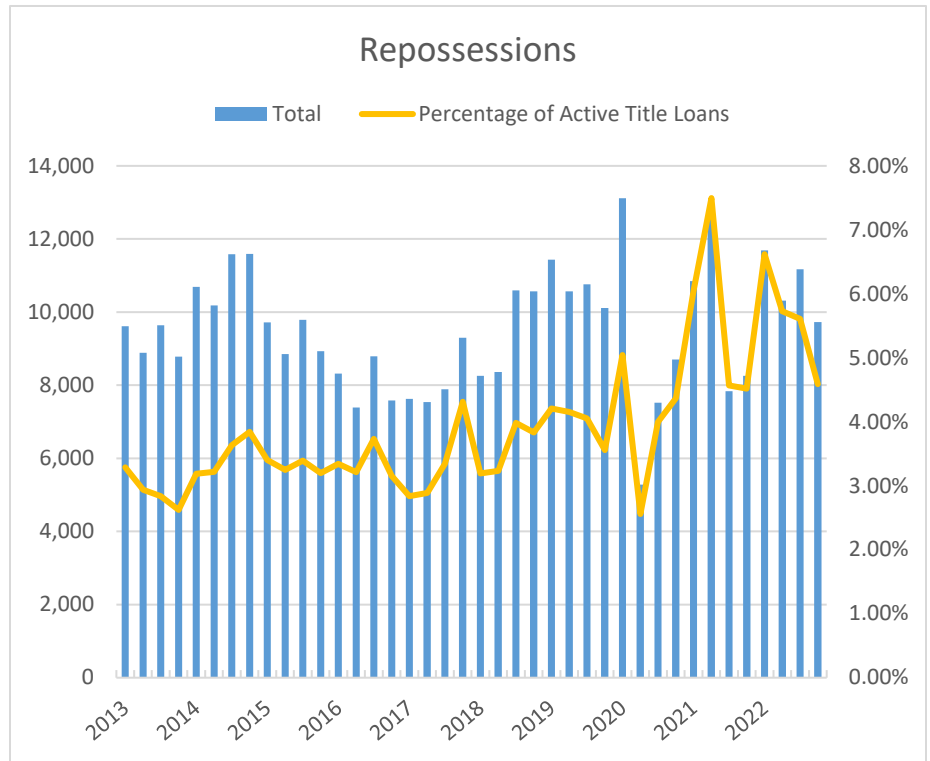
²Customers are reported on the annual report item #5. They are unique to each product type and to each location. Depending on customer borrowing habits they may be counted more than once.

³Based on averages, per dollar borrowed a consumer would pay this percentage per day. The APR could be approximated by multiplying this rate by 365; however, it could be significantly higher if the multiple installment loans reduce principal with each payment and the total fees remain the same.

⁴Equation: \sum Quarterly 10F / Annual Report #5. Effects on the estimation include (1) Single store reporting can count customers more than once if obtaining loans at different stores (2) Total transactions in 10F could be made to some customers who aren't counted in this year's customer count. e.g. They are refinancing loans made in the prior year.

Additional Repossession Information

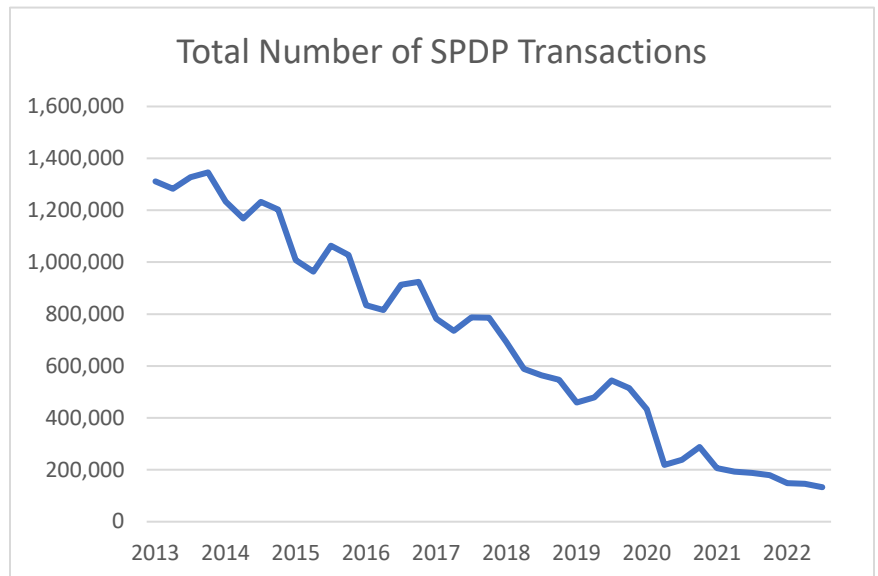
Quarterly report CAB data capturing repossessions began Jan 1, 2012. The first quarter of 2022 showed a large rise in the number of repossessions, increasing to 11,689 from Q4 2021, and decreased to 9,731 during Q4 2022. Fluctuations in quarter-to-quarter repossession figures were smaller than the previous two years, bearing a greater similarity to pre-COVID quarterly reports. The historical average number of repossessions is 9,511 per quarter, with a repossession rate of 3.92% of accounts.



The Q1 2023 repossession rate was the second-highest reported quarterly, hitting 6.62%. From there, the repossession rate decreased each quarter to 4.59%, remaining elevated in Q4 compared to the historical average.

Additional Single-Payment Deferred Presentment Information

Single-Payment Deferred Presentment Transactions (SPDP) originally represented over 90% of all deferred presentment CAB transactions. However, the total reported number of SPDP transactions has been steadily declining for a decade, now only making up 20% of all deferred presentment CAB transactions. Many cities have passed their own ordinances to regulate them, causing a drop in the number of loans made. CABs are also opting to make similar (non-CAB) loans that avoid these ordinances and are not reported to the OCCC.





Licensing Report- April 2023

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

License and Registration Renewals

In the upcoming weeks preparation for the renewal of pawnshop and pawn employee licenses will begin. The department plans to open renewal in May and pawnshops will be able to exercise the annual option of employee licensing at that time.

Application Processing

The volume of incoming business license applications averaged 96 monthly for the period September – February. The volume is below the projection of 108 applications received monthly. Incoming pawn employee applications averaged 27 monthly for the period of September – February, which is a decline of 7% from the last report (September – December). Initial projections for pawn employee applications projected the receipt of 31 applications per month.

The department is 8% under the pro rata goal for application processing through the 2nd quarter in FY 23 but anticipates reaching the goal of 1,300 business applications processed by the end of the fiscal year.

Other Updates

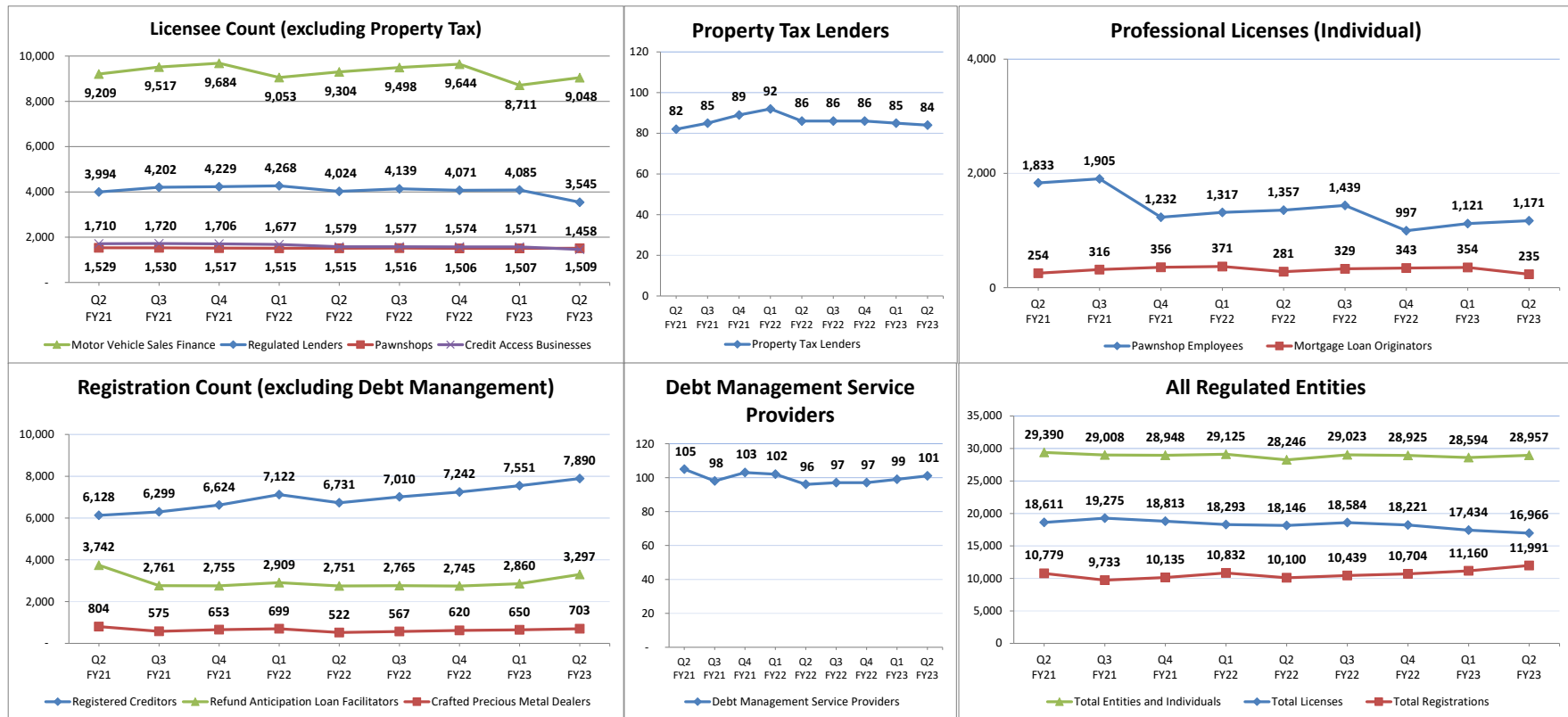
The department is actively planning to continue a records management project to consolidate remaining historical paper files and is scheduling a work week in May for the next phase of this project.

With the addition of a customer service representative in February, the licensing department is now fully staffed for the first time since 2021.

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

Financial Education staff conducted education classes at several local libraries and community centers during the month of February. A collaborative webinar on “Making a Streetwise Vehicle Purchase” was held with the Texas Department of Banking in March and three presentations are scheduled with the Texas County & District Retirement System in April. Staff traveled to the Bryan/College Station area to participate in the 2023 American Association of Family and Consumer Sciences – Texas Division Conference. Additionally, education staff will be presenting and participating as a panelist at the Sun City Anti-Fraud Program in Georgetown during the month of May.

Agency staff are wrapping up the 2nd semi-annual grant reimbursements, and TFEE has reimbursed \$254,700.27 (62.3% of the 2022-2023 total grant amount) as of March 31st. Several grantees have requested amendments for reimbursements over 50% in year one of their two-year cycles since they have served over 50% of their participation targets. A one-year grant recipient requested only 89.2% total reimbursement because they were unable to meet participation goals. The TFEE semi-annual report will be finalized once all reimbursements have been made. All TFEE materials are being reviewed and updated in anticipation of the 2024-2025 grant cycle.

COMMUNICATION

Staff communication efforts during the period included a quarterly virtual town hall meeting, publication of the spring newsletter, and continuous improvement to the recently upgraded staff intranet site. Additionally, staff continue to provide presentations to regulated entities and other groups as follows:

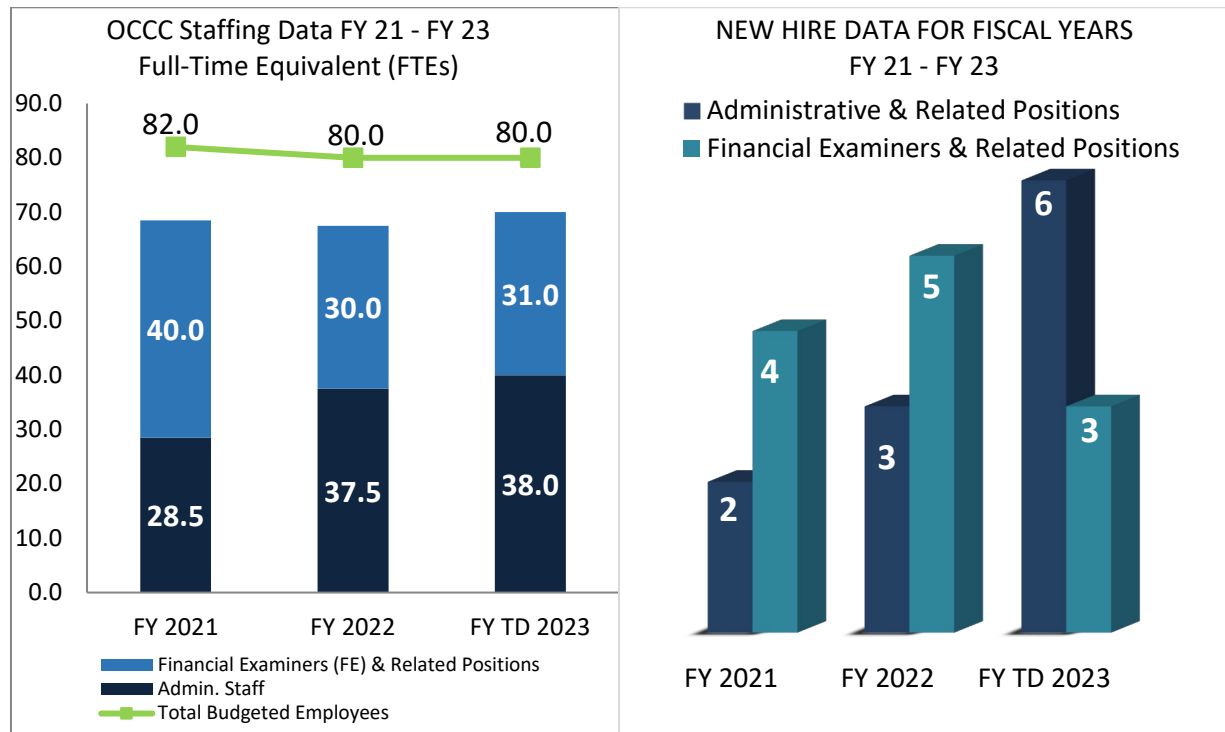
- On March 2, 2023, Financial Examiner Fancher provided a presentation to automobile dealers at a webinar sponsored by the Texas Department of Motor Vehicles (DMV).
- On March 21, 2023, Assistant Director Graham’s prior media interview with Telemundo Dallas (39), related to financing solar panels, was used for a story that aired on NBC 5 in Dallas.

HUMAN RESOURCES

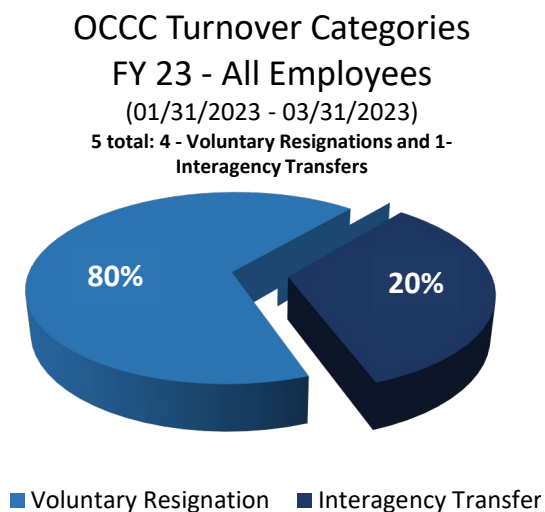
During the reporting period January 31, 2023, through March 31, 2023, the OCCC was staffed with a total of 69 FTEs.

The OCCC does not have any posted open positions as of March 31, 2023, however, the positions for a new class of financial examiners is expected to be posted in April.

The following charts represent staffing data for Fiscal Years 2021 - 2023.



The turnover rate as of March 31, 2023, is 7.50%, and the chart(s) below represents FY23 data.



INFORMATION TECHNOLOGY

Technology modernization and deployment

Migration to Microsoft 365 went live on February 1, 2023, though complicated by Winter Storm Mara. Some lingering transition issues have now been resolved which required technical support resolution. The migration was a complex and detailed change of operational software and the agency has adapted well to it.

Pursuant to Governor Abbott's directive of 07-December-2022, which mandated that DIR and DPS jointly develop and publish a plan for addressing use of personally-owned technology and defining prohibited technology, OCCC drafted and ratified the Preventing Use of Prohibited Technology policy, and revised and ratified the Access Control for Mobile Devices policy and the Data Use Agreement policy.

OCCC completed the initial annual Penetration Test, administered through DIR. A detailed report will be provided to the Audit Committee following certain analysis and the final version of the test.



Accounting Report- April 2023

Mirand Diamond, Director of Licensing & Finance

Financial Reporting

The second quarter of fiscal year 2023 ended on February 28, 2023. The second quarter financial statements are presented elsewhere in the material.

Procedures

The Department continues to work on updating all procedures and meets weekly to monitor procedure revisions and completion of those revisions.

Other Items

Garza/Gonzalez & Associates will begin an internal audit of the Texas Financial Education Endowment Fund Investment Portfolio Administration in April.

Accounting staff will submit the IRS 941 quarterly report and the TWC Multiple Worksite quarterly report in April.

The accounting team is also coordinating the submission of fiscal notes to the Legislative Budget Board. Legislation is analyzed for any potential fiscal impact to the agency. If legislation has a potential fiscal impact, then the fiscal impact is estimated.

OFFICE OF CONSUMER CREDIT COMMISSIONER
EXECUTIVE SUMMARY

As of February 28, 2023

	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	4,845			5,598
Regulated Lenders Examinations	656	818	160	210			370
Property Tax Lender Examinations	12	27	4	0			4
Pawnshop Examinations	415	638	99	98			197
Motor Vehicle Examinations	1,364	1,398	215	300			515
Credit Access Businesses Examinations	293	268	120	143			263
CONSUMER ASSISTANCE							
Telephone Complaints Received	489	491	127	107			234
Written Complaints Received	1,241	1,252	318	314			632
Total Complaints Closed	1,725	1,751	475	460			935
% of Written Complaints Closed within 90 Calendar Days	96.6%	92.3%	88.6%	90.8%			89.7%
ADMINISTRATIVE ENFORCEMENT ACTIONS							
Originated	224	114	34	4			38
Finalized	197	138	70	15			85
LICENSING AND REGISTRATION							
Licenses							
Regulated Lender Licenses	4,229	4,071	4,085	3,545			3,545
Pawnshop Licenses	1,517	1,506	1,507	1,509			1,509
Pawnshop Employee Licenses	1,232	997	1,121	1,171			1,171
Commercial MV Sales Fin. Licenses	57	59	56	61			61
Motor Vehicle Sales Finance Licenses	9,627	9,585	8,711	8,987			8,987
Property Tax Lender Licenses	89	86	85	84			84
Mortgage Loan Originators	356	343	354	235			235
Credit Access Business Licenses	1,706	1,574	1,571	1,458			1,458
Registrations							
Registered Creditors	6,624	7,242	7,551	7,890			7,890
Crafted Precious Metal Dealers	653	620	650	703			703
Debt Management Service Providers	103	97	99	101			101
Refund Anticipation Loan Facilitators	2,755	2,745	2,860	3,297			3,297
Applications							
Business -- New	1,579	1,434	160	372			532
Business -- Change of Ownership	141	58	9	38			47
Pawnshop Employees -- New	408	366	94	67			161
HUMAN RESOURCES DATA							
Field Examiners Staffing	40	30	30	31			31
Total Staffing	68.5	67.5	66.5	69			69

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%	
Quarter 2	1,750	460	935	53.4%	
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 one examiner resignation, an abbreviated work week related to examiner training in September, and abbreviated work weeks combined with personal leave taken during the last two weeks of November. This trend continued through December, with normalized exam production patterns beginning in January.					
Quarter 2	3,150	751	1,349	42.8%	*
Examination results are more than 5% under the mid year target due to focus on field training of 4 newer examiners. Also a large Enterprise Exam had to be postponed.					
EFFECTIVE LICENSING & REGISTRATION					
2-2-1 Licensing and Registration					
1. # Business License Applications Processed					
Quarter 1	1,300	169	169	13.0%	*
Applications processed in Q1 is low due to the licensing department being short-staffed and having increased customer contact due to renewal periods. Application processing will increase in Q2.					
Quarter 2	1,300	372	541	41.6%	*
Applications processed in Q2 was under the goal for year to date, but higher than Q1 due to being fully-staffed and shifting focus back to application processing.					
FINANCIAL EDUCATION					
3-3-1 Financial Education					
1. # People Receiving Direct Educational Services					
Quarter 1	650	171	171	26.3%	
Quarter 2	650	79	250	38.5%	*
The OCCC held several financial education classes during the 2nd quarter but attendance was less than forecasted. The agency has several financial education events scheduled over the next few months and anticipates that attendance will increase during Q3.					

*Varies by 5% or more from target.



Legal Department Report

Michael Rigby, General Counsel

April 2023

Enforcement Report

Contested Case

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

The OCCC closed a case that was previously pending before SOAH regarding ten Clay Cooley entities that hold motor vehicle sales finance licenses (SOAH Docket No. 466-22-0322). Under the Texas Finance Code, before a motor vehicle retail seller charges a documentary fee over \$150, the seller must notify the OCCC and provide a cost analysis showing that the fee is reasonable. 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 an order adopting the judge's proposal for decision as modified. Neither party requested a rehearing and the order became final and enforceable. On February 28, 2023, the Cooley entities complied with the order by submitting to the OCCC a spreadsheet identifying \$499,406.10 the entities paid in restitution to 15,490 Texas consumers.

Orders to Allow Examination and Investigation

In March 2023, the OCCC issued injunctive orders against three motor vehicle dealers. The orders required the dealers to allow the OCCC to conduct an examination and investigation, and to provide a statement of where records may be examined.

Performance Report

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

September 1, 2022 through March 31, 2023	
Cases Opened	49
Cases Closed	99
Average Number of Days to Close an Enforcement Action	148
Contested Cases Docketed at SOAH	2
Enforcement Actions Taken and Closed by Final Order	94

As of March 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 March 31, 2023			
	FYTD 2023	FY 2022	FY 2021
Injunction Actions			
Crafted Precious Metal Dealer	0	0	0
Credit Access Business	4	23	33
Debt Management Provider	1	2	10
Manufactured Housing	0	0	0
Motor Vehicle Sales Finance	13	7	11
Motor Vehicle Sales Finance Commercial	0	0	1
Pawnshop	16	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	59	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	3	5	0
Residential Mortgage Loan Originator	0	0	0
Total Revocation / Suspension Actions	7	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	99	138	197

Rule Actions

The OCCC is not presenting any rule actions at the April 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. On February 21, the plaintiff filed a reply brief. The appeal is currently pending.

State of Texas v. Student Loan Relief, LLC

In October 2017, the Consumer Protection Division of the Office of the Attorney General filed a lawsuit in Travis County district court against Student Loan Relief, LLC; Student Loan Relief of Texas, Inc.; Your Student Loan Relief Organization; and Jason Spencer (case no. D-1-GN-17-005516).

The lawsuit alleged that the defendants violated the Deceptive Trade Practices Act (DTPA) and Chapter 394 of the Texas Finance Code by: (1) providing debt management services to Texas consumers without registering with the OCCC, (2) engaging in false and deceptive advertising, (3) charging premature or unauthorized fees, (4) misappropriating or misapplying loan payments, (5) requesting loan deferments or forbearances without permission, and (6) failing to provide refunds or cease withdrawals.

On March 27, 2023, the district court issued a default judgment and permanent injunction against the defendants. The judgment orders the defendants to: (1) cease their violations of the DTPA and Chapter 394, (2) pay \$281,432 to the state in attorneys' fees and investigative costs, (3) pay \$879,384 in restitution to consumers, and (4) pay \$441,100 in civil penalties.

Advisory Bulletins

From February 1, 2023 to March 31, 2023, the OCCC issued one advisory bulletin. The bulletin describes the Finance Code's licensing requirements for motor vehicle sales finance companies.

Official Interpretation Requests

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

Public Information Requests

February 1, 2023 through March 31, 2023	
Requests Received	22
Requests Closed	24
Requests Withdrawn	1
Requests Referred to Office of Attorney General	0
Average Number of Days to Address a Public Information Request	2.7

Gifts Received by the OCCC

From February 1, 2023 to March 31, 2023, the OCCC received no gifts.

This page left blank intentionally.

D.

**Department of Savings and
Mortgage Lending**

This page left blank intentionally.

D. Department of Savings and Mortgage Lending

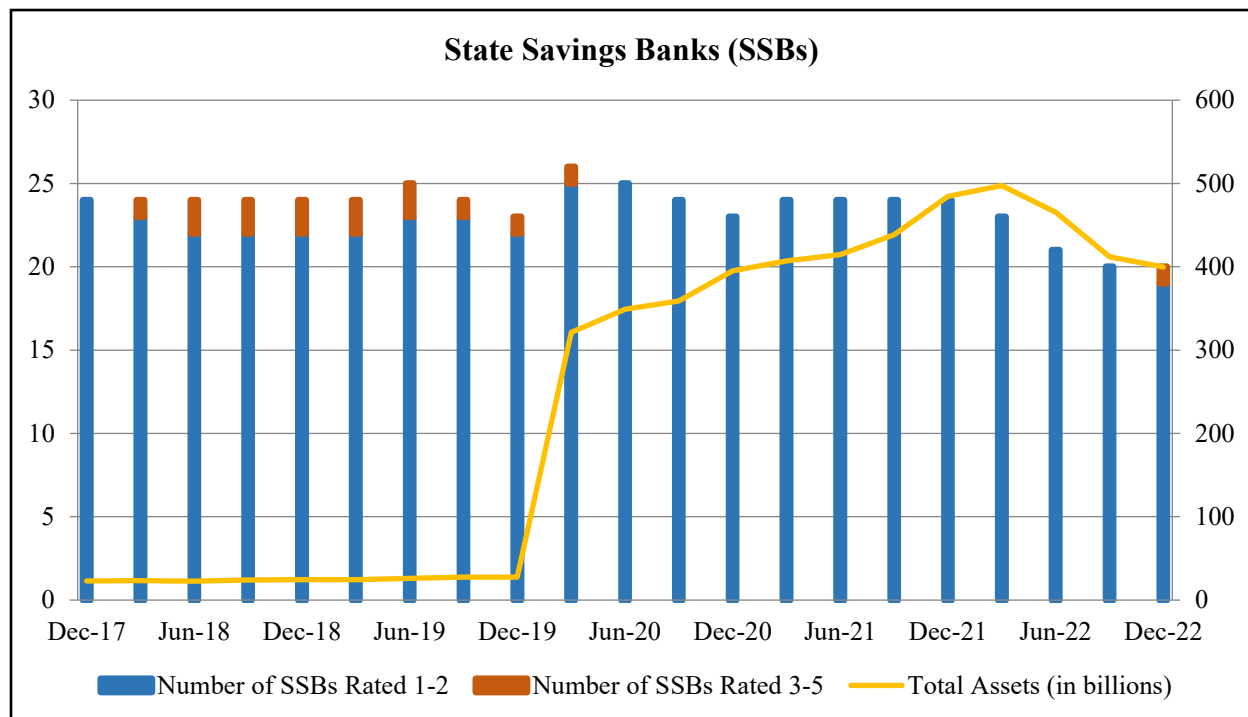
1. Industry Status and Departmental Operations: a) Thrift Regulation Division Activities; b) Mortgage Regulation Division Activities; c) Operations Division Activities; d) Legal Division Activities, including Consumer Complaints and Gift Reporting; and e) Legislative Activities

a) Thrift Regulation Division Activities

Industry Status

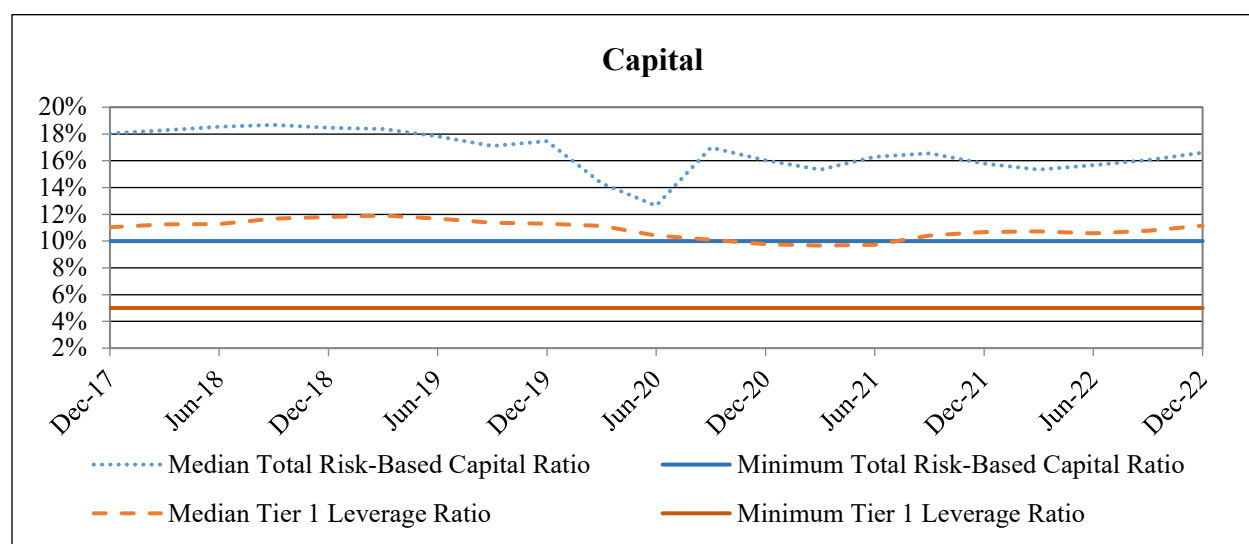
The Department continues to monitor various local, state, and national data sources to understand the risks facing the industry and individual savings banks.

The Department conducts bank examinations to ensure confidence in the banking system using the Uniform Financial Institutions Rating System (UFIRS). Banks with a UFIRS rating of 1 or 2 are considered well rated. The industry consists of 21 state savings banks with assets totaling \$399.7 billion as of December 31, 2022. The industry remains sound with 90% of banks being well rated as of February 28, 2023, and with two informal supervisory actions in place.

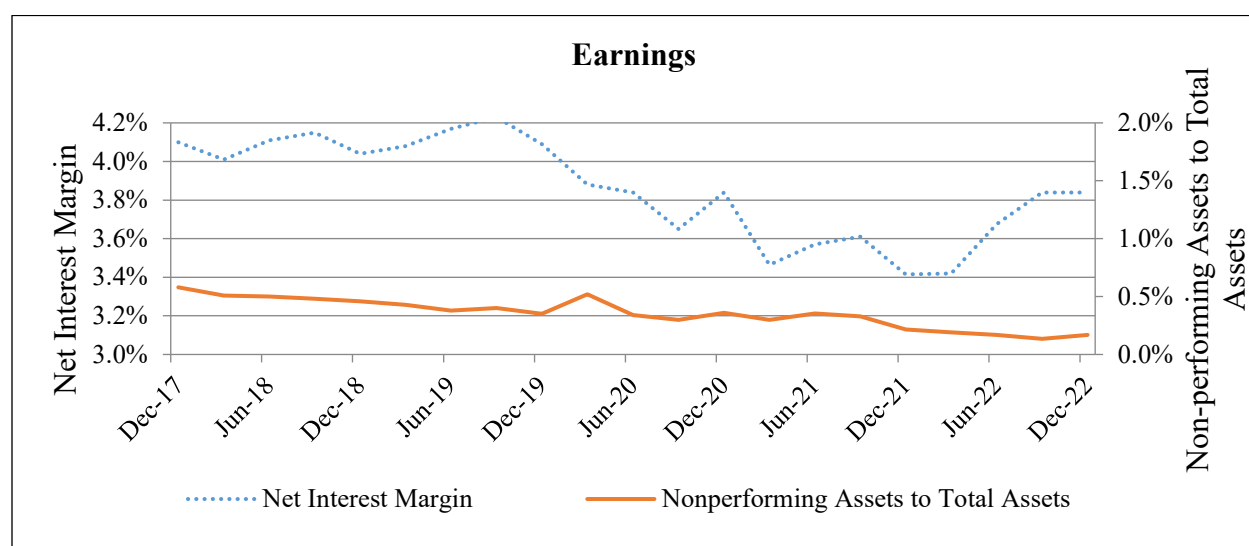


All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions. Below are specific areas that the Department monitors in relation to changes in the state and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

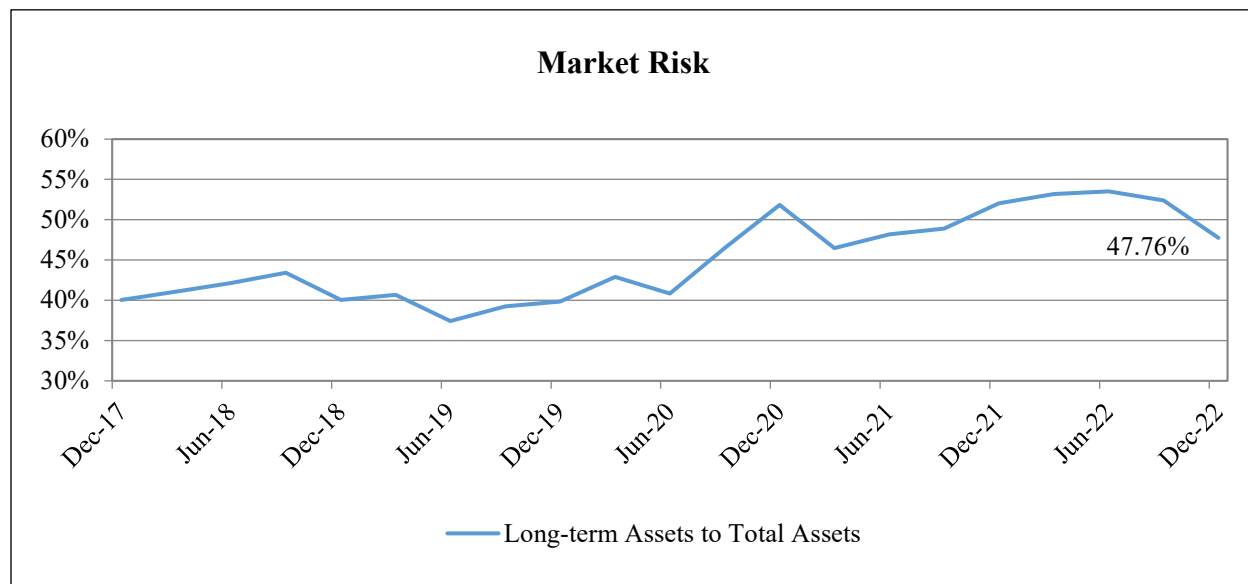
Bank capital performs several very important functions, including absorbs losses, promotes public confidence, helps restrict excessive asset growth, and provides protection to the depositors. Regulatory capital standards are designed to strengthen the quality and quantity of bank capital and promote a stronger financial industry that is more resilient to economic stress. As of December 31, 2022, all SSBs remain well above regulatory capital minimums. The portfolio median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 16.60% and 11.15%, respectively.



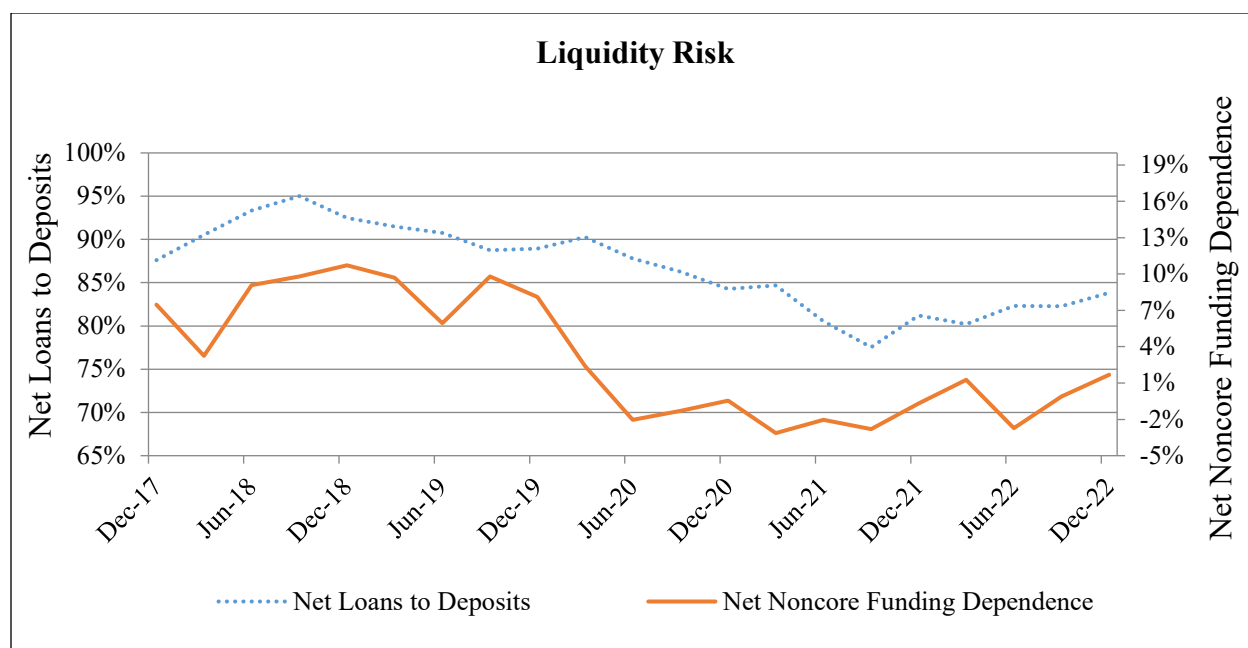
Earnings is the initial safeguard against the risk of engaging in the banking business and is the first line of defense against capital depletion resulting from shrinkage in asset value. Earnings performance should allow the bank to remain competitive by providing the resources required to implement management's strategic initiatives. The net interest or profit margin is 3.84%. Non-performing asset levels remain low at 0.17% of total assets.



Market risk primarily reflects exposures to changing interest rates over time. Long-term asset exposure can be an indicator of the degree of market risk taken by a state savings bank. As of December 31, 2022, the long-term assets to total assets ratio decreased to 47.76%.



Liquidity risk reflects the bank's ability to fund assets and meet financial obligations under various scenarios, including adverse conditions. Liquidity risk continues to decline. The Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies, is negative 2.73%. The loan-to-deposit ratio, a measure of the use of deposits to fund lending activities, is 82.30%.



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

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

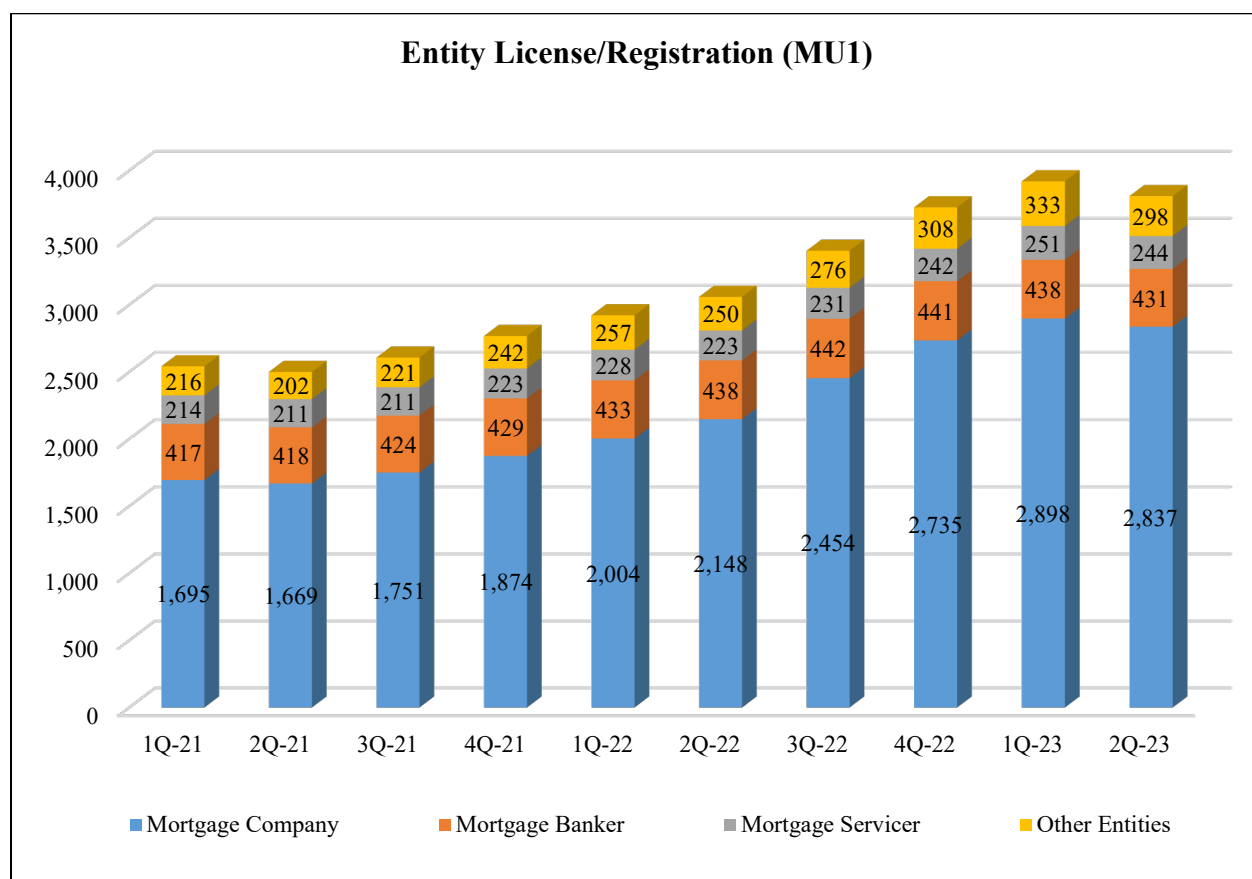
No merger activity was received, approved, or effective, since the February 2023 Finance Commission meeting.

b) Mortgage Regulation Division Activities

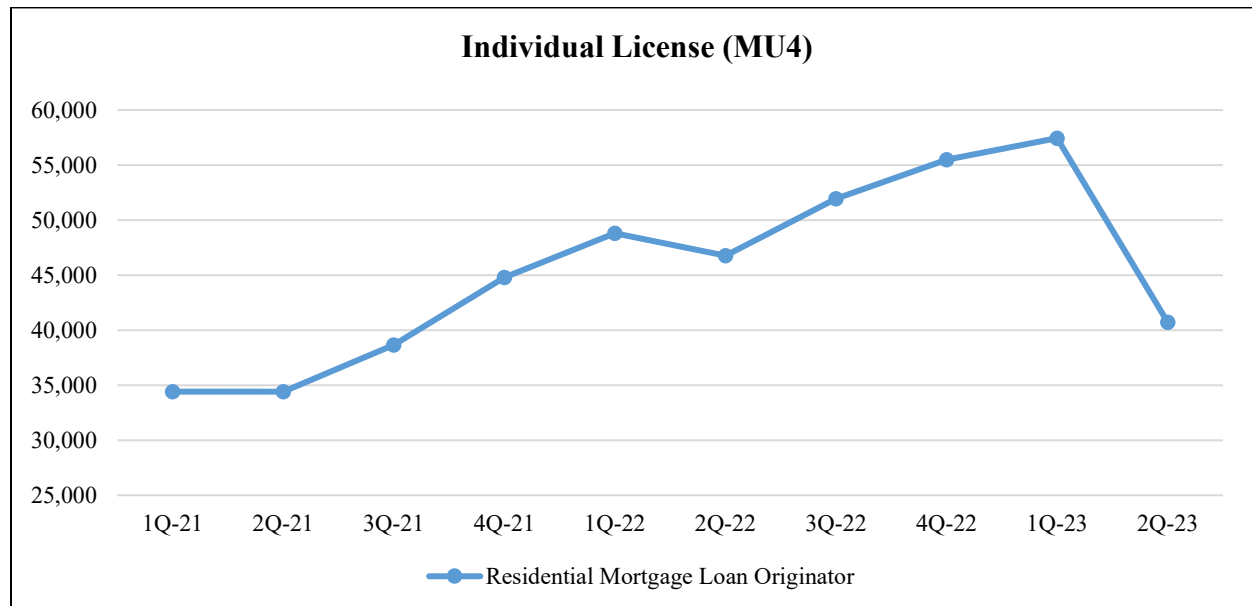
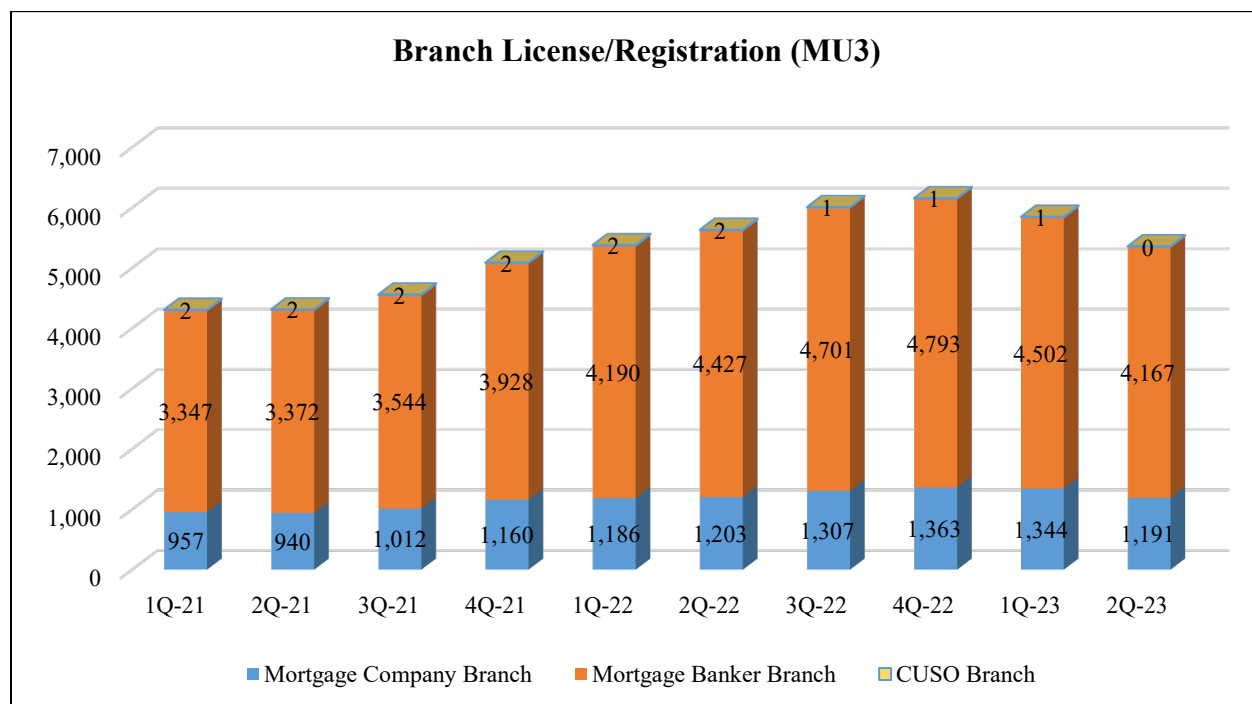
Industry Status

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

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



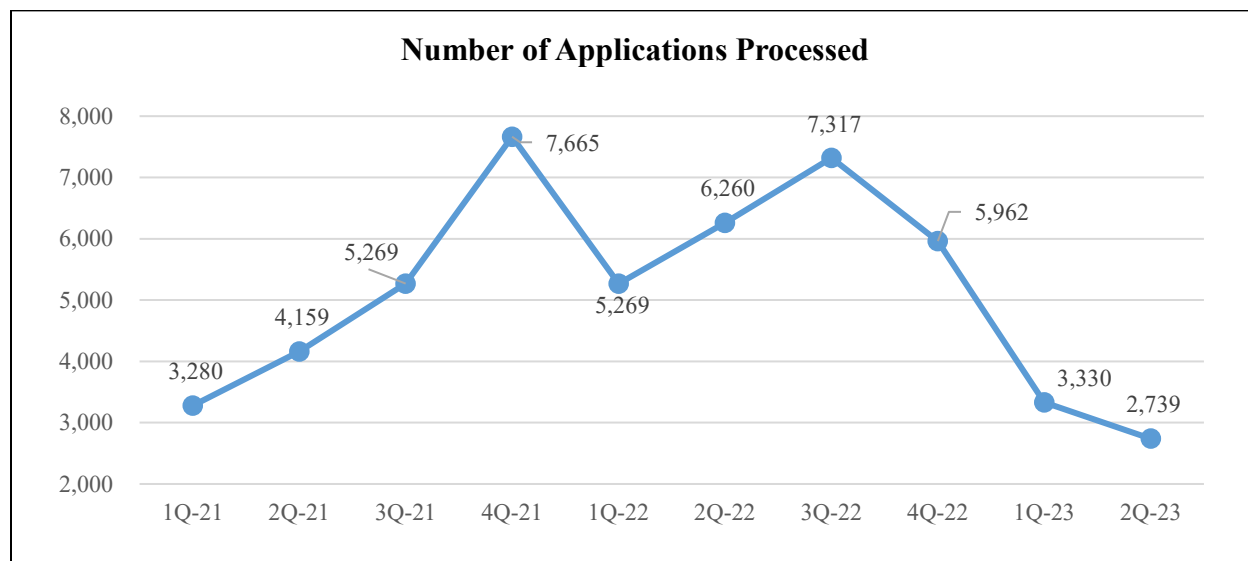
Other entities include Auxiliary Mortgage Loan Activity Company, Credit Union Subsidiary Organization (CUSO), Financial Services Company, and Independent Contractor Processor/Underwriter Company.



Licensing Activity Report

For the second quarter of FY2023, the Mortgage Licensing section processed 2,739 applications and approved 2,339 applications, including 219 mortgage entities, 494 branch offices, and 1,626 residential mortgage loan originators. The remaining 400 applications were either withdrawn by the applicant or denied by the Department.

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



Due to high interest rates, reduced housing supply, and other macro issues, the number of applications received by the Department for mortgage entities, branches and residential mortgage loan originators have declined between the first quarter of FY2023 (3,003 applications) and the second quarter of FY2023 (2,749 applications). This trend was anticipated and is expected to continue throughout the remainder of the fiscal year. The recent number of applications received by the Department is more aligned with the historical averages for the Department.

Additionally, according to NMLS Data Analytics for the second quarter of FY2023, the Mortgage Licensing section processed 23,444 license amendments, 3,003 credit report reviews, 13,083 sponsorship removals, and 4,763 sponsorship requests.

Upon the conclusion of the renewal and reinstatement period, the Department experienced 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. The table below reflects the number of licensees/registrants eligible for renewal and the percentage of the individuals or entities that requested a renewal.

Type of License	Renewable Licenses	Requested Renewal	% Requested
Mortgage Loan Originator	56,651	38,636	68.2%
Mortgage Banker	438	427	97.5%
Mortgage Company	2,838	2,601	91.6%
Mortgage Loan Servicer	249	235	94.4%
Independent Contractor Processor/Underwriter Company	317	262	82.6%
Other	8	7	87.5%

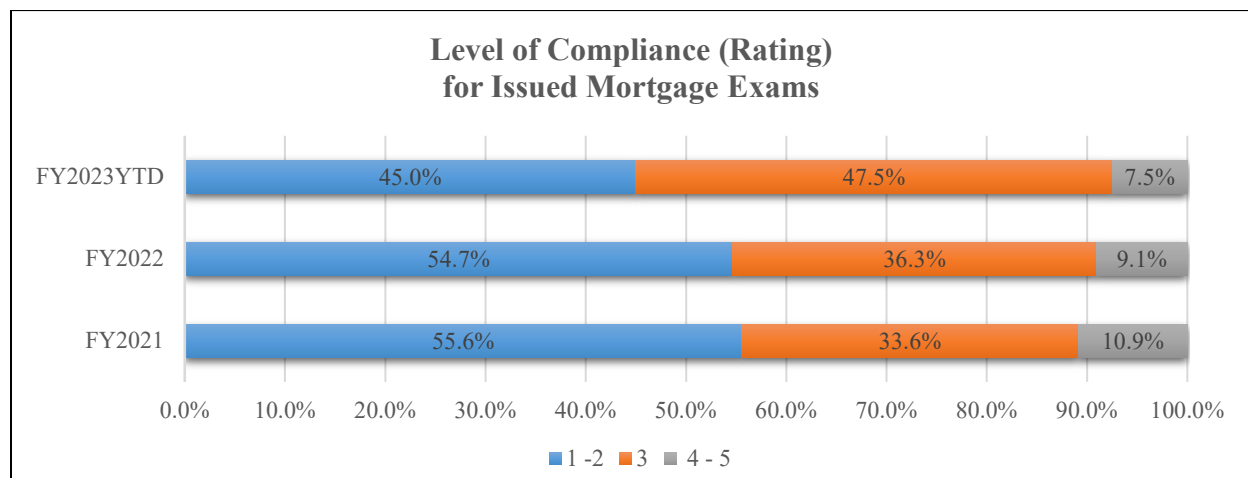
Even though there was notable reduction in the number of licensed residential mortgage loan originators, the current number of licensed residential mortgage loan originators is nearly equivalent to the number of licensed residential mortgage loan originators realized in the third quarter of FY2021 which is higher than the historical average for the Department.

Mortgage Examination Activity Report

For the second quarter of FY2023, the Mortgage Examination section issued 112 examination reports covering 1,350 individual licensees. The number of issued examination reports is comparable to the second quarter of FY2022 where the Department issued 114 examination reports. The overall production level for the number of issued examinations was affected by: (1) turnover within the Mortgage Examination staff (two Financial Examiners left the Mortgage Examination section); (2) attendance of the Mortgage Examination staff at reverse mortgage and home equity loan training; (3) complexity of the examination issues discovered as part of the examinations; and (4) participation in the first multi-state examination in SES. To increase the number of examinations issued, the Mortgage Examination section has posted four additional Financial Examiner positions and has hired two of the four positions. Because of the time necessary to fully train a Financial Examiner, the Department will experience some delay before the newly hired Financial Examiners will contribute to the overall production for issued examination reports.

As mentioned above, the Department has adopted and implemented the use of the Conference of State Bank Supervisors (CSBS) State Examination System (SES) for multi-state and coordinated examinations of non-depository mortgage entities. As of January 2023, the Department is participating in its first multi-state examination in SES with eight other state agencies. The multi-state examination will require the devotion and dedication of a significant amount of examiner resources before its conclusion.

Below is a breakdown of mortgage examination results by compliance rating for the first half of FY2023. As shown in the chart below, the stratification of examination ratings during the past six months reflects an increasing number of 3-rated examination reports and a declining number of combined 1 and 2 rated examination reports when compared to FY2022. As an examination rating of 1, 2, or 3 is considered to be an acceptable level of compliance, the mortgage examination ratings fall within the satisfactory range for the Department (90% or more of the examinations within an acceptable level of compliance).



During the second quarter of FY2023, two 5-rated examination reports were issued. The 5-rated examination reports reflected significant areas of non-compliance including:

- Failure to Produce Records upon Request
- Unlicensed Activity
- Payment of Unearned Fees or Referral Fees
- Collection of Time-Restriction Fees
- Collection of Fees outside of Permitted Tolerances
- Collection of Excessive Fees
- Recordkeeping
- Failure to Obtain Written Certification of Pre-loan Counseling on High-Cost Mortgage Loan
- Failure to Maintain an Adequate Information Security Program

The most common violations for the other examinations included 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

During the second quarter of FY2023, the entire Mortgage Examination staff attended 4 hours of training on the requirements, conditions, and limitations for home equity loans and home equity lines of credit.

c) Operations Division Activities

Accounting, Budget, and Financial Reporting

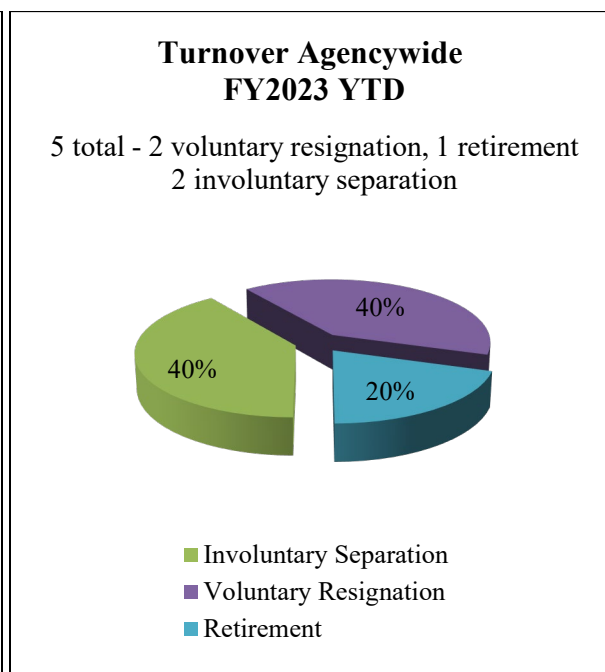
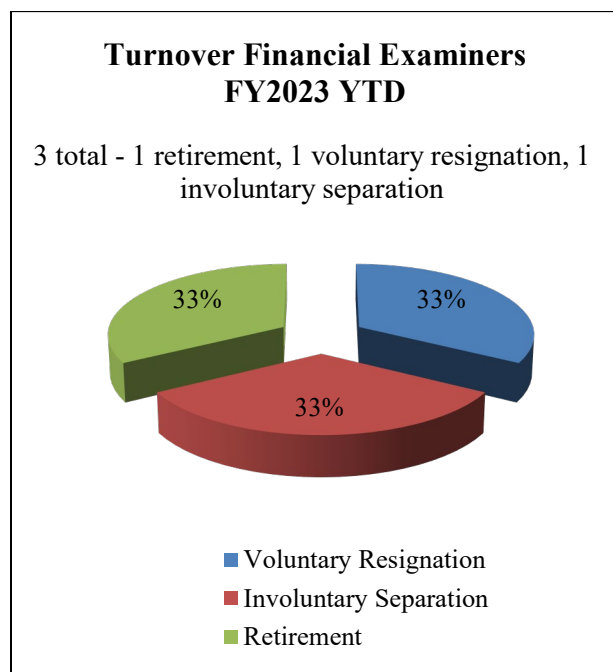
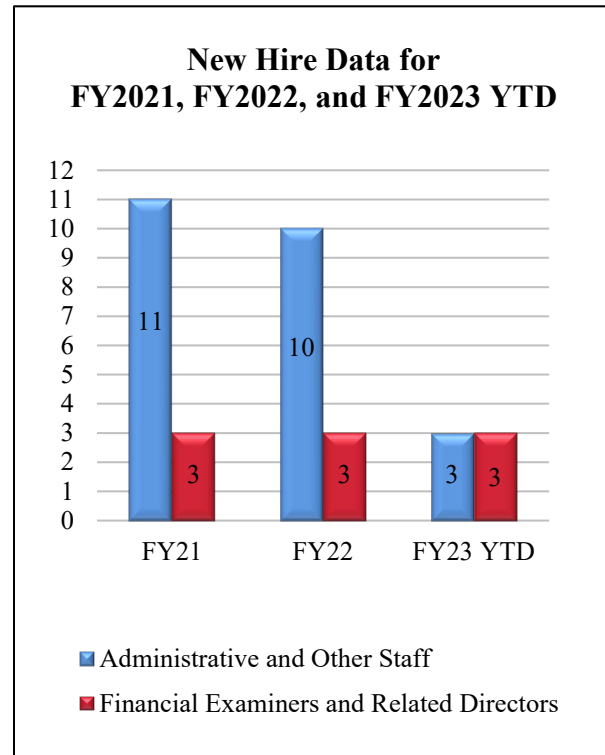
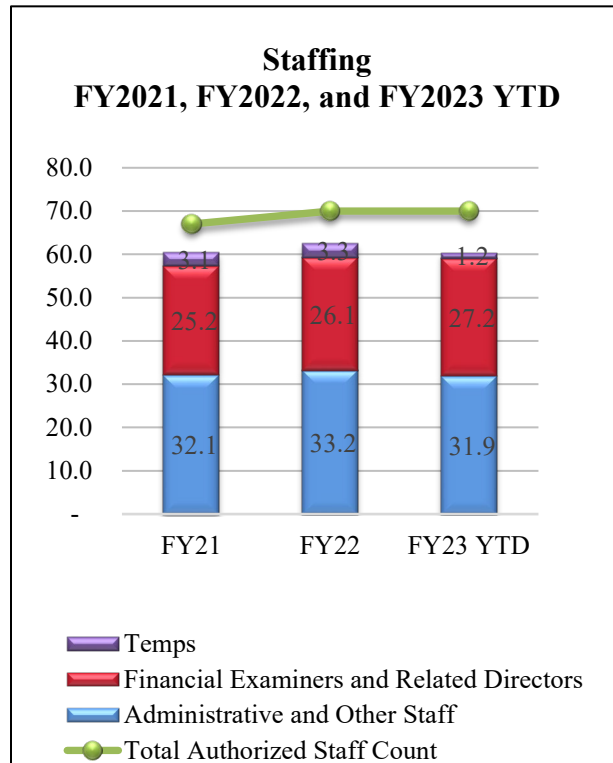
Staff closed out the second quarter of fiscal year 2023. The reports are located elsewhere in the packet.

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.

Legislative Activity – Staff monitors the progress of filed bills and prepares fiscal notes as requested by the Legislative Budget Board.

Human Resources

Staffing Charts as of February 28, 2023



As of March 31, 2023, the Department was staffed at 64 regular full-time employees. In March, two Financial Examiner-Mortgage and one Management Analyst joined the Department.

Below is the status of the Department's vacancies:

Vacancy Status	
Management Analyst III/IV	Position Filled
Financial Examiner I – Mortgage Examinations - 2	
Financial Examiner VI/VII – Thrift Examinations - 3	Collecting and reviewing applications, interviewing candidates
Financial Examiner V – Thrift Examinations	
Financial Examiner I – Mortgage Examinations - 2	
Financial Examiner I-II -Thrift Examinations (Information Technology)	
Financial Examiner I – Thrift Examinations	Collecting and reviewing applications
Attorney I/II	
Financial Examiner I – Thrift Examinations (Internship) - 2	

Outreach and Training

The quarterly agency-wide meeting and training was held on February 23, 2023. Sessions covered topics related to the 88th Legislative Session, Information Resources and Human Resources updates.

The next quarterly agencywide meeting and training is scheduled for May 31, 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%	*
Quarter 2	19	4	6	31.58%	*

* 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%
Quarter 2	13,000	2,739	6,069	46.68%

2. Number of Examination Reports Issued

Quarter 1	550	88	88	16.00%	*
Quarter 2	550	112	200	36.36%	*

*The overall production was affected by vacancies, the attendance of the entire Mortgage Examination staff at reverse mortgage and home equity loans training, the complexity of examination issues discovered during the examinations, and participation in the first multi-state examination in the SES.

3-1-1 Consumer Responsiveness

1. Number of Complaints Closed

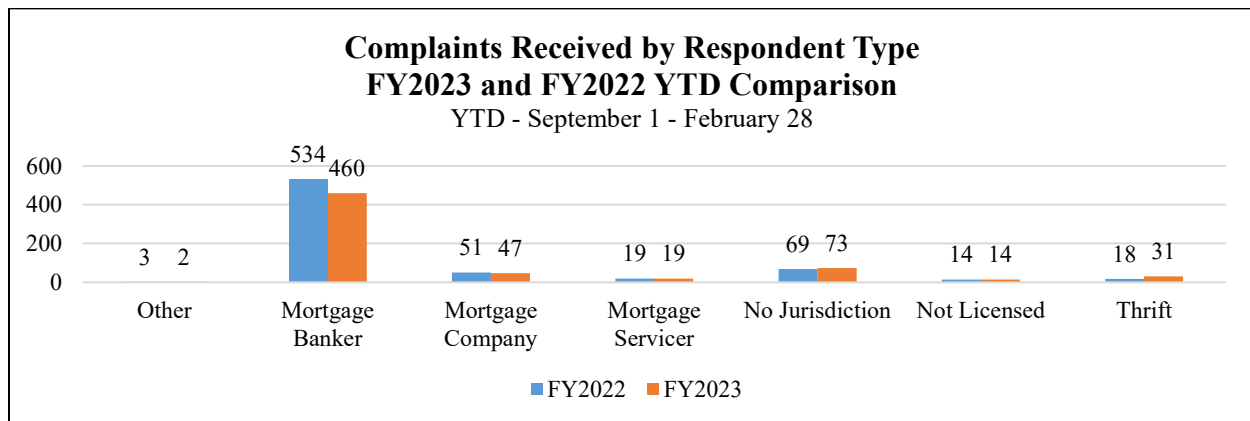
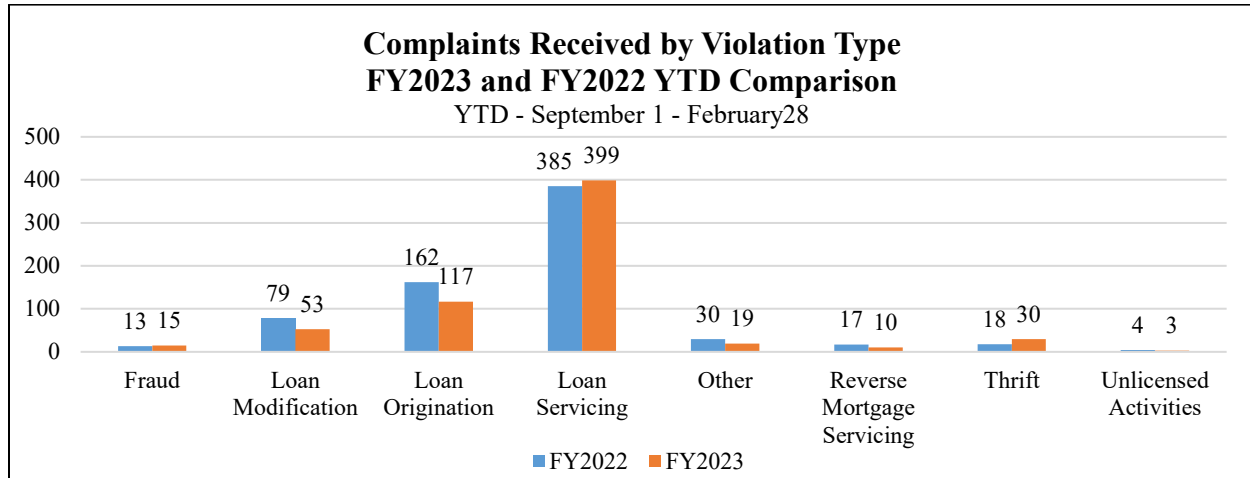
Quarter 1	1,300	297	297	22.85%
Quarter 2	1,300	347	644	49.54%

*Varies by 5% or more from target.

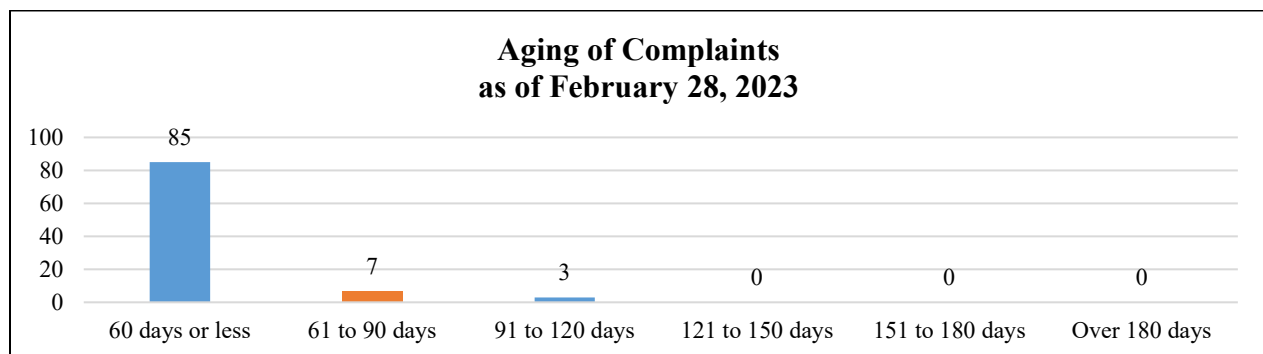
d) Legal Division Activities, including Consumer Complaints and Gift Reporting

Consumer Complaints Activity Report

Complaints Received – For the fiscal year to date (September 1 – February 28, 2023), the Department received 646 complaints, compared to 708 received during the same period in FY2022, representing a 9% decrease.



Aging of Open Complaints – As of February 28, 2023, there were 95 open complaint files. Complaint aging is acceptable with 97% 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	212		
Average Number of Days to Close a Complaint	26	23.56		
Percentage of Complaints Closed Within 90 Days	99.4%	97.64%		
Non-Servicing Complaints				
Number of Non-Servicing Complaints Closed	120	123		
Average Number of Days to Close a Complaint	20	26.24		
Percentage of Complaints Closed Within 90 Days	100%	93.50%		
Total	297	335		

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	7		
Agreed Order to Take Affirmative Action	1	1		
Agreed Order to Cease and Desist	0	0		
Agreed Order – Other	0	0		
Letter of Reprimand	0	0		
Notice of Suspension/Revocation	3	0		
Order to Cease and Desist	10	3		
Order to Take Affirmative Action	19	8		
Total	47	19		

Recovery Claims

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

Status of Pending Recovery Claim Applications as of February 28, 2023	
Pending Investigation	4
Pending Preliminary Determination Letter	2
Preliminary Determination Letter Issued, Pending Opportunity to Appeal	0
On Appeal	0
Open to Facilitate Resolution by the Parties	0
Total	6

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

Contested State Office of Administrative Hearings (SOAH) Cases

The Department does not have any cases currently pending at SOAH.

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. Mr. Wagner did not make a further appeal, and the deadline to do so has passed. The Department now awaits issuance of the court's mandate which is anticipated on or about April 7, 2023.

Public Information Requests

Public Information Requests	FY2023			
	1 st Qtr	2 nd Qtr	3 rd Qtr	4 th Qtr
Requests Received	50	37		

Rulemaking

SML Future Rule Activity		
Rule	Rulemaking Action	Projected Date for Presentation
Chapter 52, Charter Applications	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 53, Additional Offices	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 57, Change of Office Location or Name	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 60, Savings Associations	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 61, Hearings	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 63, Fees and Charges	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 65, Loans and Investments	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 67, Savings and Deposit Accounts	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 71, Change of Control	Adoption of Rule Changes Resulting from Rule Review	June 2023
Chapter 73, Subsidiary Corporations	Adoption of Rule Changes Resulting from Rule Review	June 2023

Gift Reporting

On January 19, 2023, Chief Mortgage Examiner, Ellena Meier, and Director of Mortgage Regulation, William Purce, attended a training seminar conducted by the Texas Mortgage Bankers Associate (TMBA). The applicable fee of \$118 was waived.

On February 16, 2023, Review Examiner, Justin Accola, and Director of Mortgage Regulation, William Purce, attended a training seminar conducted by TMBA. The applicable fee of \$118 was waived.

e) Legislative Activities

The 88th Legislature convened on January 10, 2023. The deadline for the unrestricted filing of bills and joint resolutions was March 10, 2023. The last day of the 88th Regular Session (sine die) is May 29, 2023. Department staff is monitoring approximately 814 bills that may affect the Department or its regulated industries.

2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 52, Concerning Charter Applications, Resulting from Rule Review

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

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 52 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 52 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. CHARTER APPLICATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 52, as follows: §§52.1 - 52.15. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 52.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

the state because the department does not contribute to the state's general revenue fund.

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 52; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 52; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as

provided by Government Code §2007.043 is not required.

Public Comments

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

7 TAC §§52.1 - 52.15

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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

§52.2. Use of Approved Forms.

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

§52.4. Publication of Notice of Charter Application.

§52.5. Notice to Associations.

§52.6. Filing Proof of Publication.

§52.7. Hearing When Application Not Protested.

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

§52.9. Time of Decision on Charter Applications.

§52.10. Motions for Rehearing.

§52.11. Definition of Community.

§52.12. Identification of Office Site; Temporary Location.

§52.13. Qualifying Management.

§52.14. Notice to Applicants.

§52.15. Appeals.

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

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

◆ ◆ ◆

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 53, Concerning Additional Offices, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 53 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 53 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 53 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 53. ADDITIONAL OFFICES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 53, as follows: §§53.1 - 53.5, 53.7 - 53.10, 53.17, and 53.18. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 53.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

the state because the department does not contribute to the state's general revenue fund.

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 53; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 53; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as

provided by Government Code §2007.043 is not required.

Public Comments

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

7 TAC §§53.1 - 53.5, 53.7 - 53.10, 53.17, 53.18

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§53.1. Establishment and Operations of Additional Offices.

§53.2. Types of Additional Offices.

§53.3. Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision.

§53.4. Findings Necessary for Approval of Branch Office.

§53.5. Loan Production Offices (Loan Offices), Administrative Offices, and Deposit Production Offices.

§53.7. Verification of Applications.

§53.8. Mobile Facility Application; Operation of Mobile Facility; Notice; Publication; Hearing.

§53.9. Exemption for Supervisory Sale.

§53.10. Designation of Supervisory Sale.

§53.17. Temporary Closing of Additional Offices.

§53.18. Offices in Other States or Territories.

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

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

◆ ◆ ◆

4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 57, Concerning Change of Office Location or Name, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 57 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 57 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 57 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 57, as follows: §§57.1 - 57.4. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 -

65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 57.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

the state because the department does not contribute to the state's general revenue fund.

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 57; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 57; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as

provided by Government Code §2007.043 is not required.

Public Comments

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

7 TAC §§57.1 - 57.4

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§57.1. Change of Office Location Not Requiring Approval; Application for Change of Location; Findings for Approval.

§57.2. Notice, Publication, Hearing.

§57.3. Change of Name.

§57.4. Application Forms.

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

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

◆ ◆ ◆

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New Rules in 7 TAC, Part 4, Chapter 60, Concerning Savings Associations, Resulting from Rule Review

PURPOSE: The purpose of the new rules in 7 TAC Chapter 60 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the new rules in 7 TAC Chapter 60 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the new rules in 7 TAC Chapter 60 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 60. SAVINGS ASSOCIATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes new rules in 7 TAC Chapter 60, as follows: §§60.1, 60.2, 60.101 - 60.104, 60.121 - 60.123, 60.131 - 60.133, 60.141 - 60.145, 60.161 - 60.165, 60.171, 60.181, 60.191, 60.201 - 60.204, 60.221 - 60.227, 60.231 - 60.234, 60.241 - 60.245, 60.251, 60.252, 60.261, 60.301 - 60.309, 60.321, 60.323 - 60.326, and 60.331. This proposal and the rules as added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 65, §§65.4 - 65.10, 65.13, 65.14, 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such existing rules is not included in the proposed rules.

Changes Concerning Savings and Deposit Accounts

The department's existing rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such existing rules is not included in the proposed rules.

Changes Concerning Holding Companies

Pursuant to Finance Code §66.051(a), the department's commissioner (commissioner) is required to conduct periodic examinations of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.053, the commissioner is entitled access to the books and

records of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.103(a), the commissioner may intervene in the affairs of a savings association if a person that participates in the affairs of the savings association, its subsidiaries, or any holding company of the savings association, is about to commit: a fraudulent or criminal act that may cause the savings association to be insolvent; an act that threatens harm to the public, the savings association, or its account holders or creditors; or a breach of fiduciary duty that results in substantial financial losses or other damages to the savings association or that would prejudice the interests of its account holders or shareholders. Pursuant to Finance Code §66.104, the commissioner may intervene in the affairs of a savings association if a person who participates in the affairs of the association, its subsidiaries, or any holding company of the savings association, refuses to submit to or otherwise interferes with an examination conducted by the commissioner. In order to facilitate the examination of a savings association holding company and ensure the department has adequate knowledge of its existence and affairs, the proposed rules, if adopted, would: require a savings association to register with the department any holding company of the savings association within 90 days of the holding company becoming a holding company and pay a one-time application fee of \$2,000; require a savings association holding company and its subsidiaries to file periodic reports with the department as determined by the commissioner; require a savings association holding company and its subsidiaries to maintain books and records in the same manner required of a savings association; clarify the existing requirements of Finance Code §66.051(a) by requiring a savings

association holding company and its subsidiaries to submit to and bear the costs of an examination; require a savings association holding company, if directed by the commissioner, to appoint an agent for service of process; and establish conditions under which a savings association holding company may be released from the registration requirements under the proposed rules, including a requirement that a savings association holding company maintain books and records after it has been released from such registration requirements.

Changes Concerning Fees

Pursuant to Finance Code §61.007(1), the commission, by rule, determines the fees assessed by the commissioner in connection with filing an application or other documents with the department. The department's existing rules in Chapter 63 (proposed for repeal elsewhere this issue of the *Texas Register* in connection with the proposed rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), establish fees for various applications filed with the department. Such existing rules do not establish a specific fee concerning an application by a financial institution other than a savings association seeking to convert to a savings association charter. Instead, the \$10,000 fee for a de novo charter application under existing §63.1 is assessed. The proposed rules, if adopted, would establish a specific fee for an application concerning such a conversion by a financial institution other than a savings association to a savings association charter. The fee is determined based on the total asset size of the financial institution seeking to convert to a savings association charter, as follows: \$0 to less than \$125 million - \$2,500; \$125 million to less

than \$500 million - \$5,000; \$500 million to less than \$1 billion - \$10,000; over \$1 billion - \$15,000. Under the proposed rules, the fee for converting to a savings association charter could therefore be higher or lower depending on the asset size of the financial institution seeking conversion; however, the department anticipates any potential application for conversion to a savings association charter under the proposed rules will be filed by a financial institution with an asset size of less than \$1 billion and will therefore result in a fee equal to or lesser than the fee under existing §63.1. The department asserts a graduated fee for an application for conversion based on the asset size of the financial institution seeking conversion better reflects the true costs of the department in processing the application and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions. Under existing §63.11 (proposed for repeal elsewhere this issue of the *Texas Register* in connection with the proposed rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of \$10,000 for an application concerning change of control of a savings association made in accordance with Finance Code Chapter 62, Subchapter L. The proposed rules, if adopted, would lower such fee from \$10,000 to \$5,000. Pursuant to Finance Code §66.052, the commissioner is required to conduct periodic examinations of the savings associations it regulates. Pursuant to Finance Code §66.052(a), the commissioner may conduct additional examinations of a savings association (each a special examination) if deemed by the commissioner to be appropriate based on the condition of the savings association. Pursuant to

Finance Code §66.052(a), the savings association being examined is required to bear the costs of such special examination. Under existing §63.5 (proposed for repeal elsewhere this issue of the *Texas Register* in connection with the proposed rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of \$325 per day for each examiner performing a special examination. The proposed rules, if adopted, would: assess a maximum fee of \$75 per hour for each examiner performing a special examination; clarify the existing requirement, pursuant to Finance Code §66.052(a), that a savings association bear the cost of the special examination, by clarifying that such costs include expenses related to travel, food, and lodging of the examiner performing the special examination; and clarify the commissioner's existing authority to assess a lower fee rate or otherwise waive any fees or costs related to a special examination. To the extent an examiner performing a special examination works a standard eight-hour day, the proposed rules would have the effect of raising the per diem fee from \$325 to \$600; however, if an examiner works four hours or less on any given day, the proposed rules would have the effect of lowering such per diem fee. The department asserts a per hour fee better reflects the true costs of the department in conducting a special examination and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules

including: adding and replacing language for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

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

Public Benefits

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

associations to be easier to locate by members of the public.

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). The foregoing notwithstanding, the department includes in this proposal a cost note addressing potential although improbable costs to persons required to comply with the proposed rules. Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect the proposed rules related to Changes Concerning Fees may result in costs to a savings association required to register a savings association holding company under the proposed rules. Specifically, the proposed rules, if adopted, would assess a \$2,000 application fee to a savings association required to register a savings association holding company; however, no savings associations currently exist. As a result, these potential costs to persons required to comply with the proposed rules are not probable. Stephany Trotti has further determined that for the first five years the proposed rules are in effect the proposed rules related to Changes Concerning Fees may result in costs to a savings association subject to a special examination under Finance Code §66.052. Specifically, the proposed rules, if adopted, would change the fee assessed to a savings association for each examiner conducting the special examination from \$325 per day to \$75 per hour. To the extent an examiner performing a special examination works a standard eight-hour day, the proposed

rules would have the effect of raising the per diem fee from \$325 to \$600; however, if an examiner works four hours or less on any given day, the proposed rules would have the effect of lowering such per diem fee. The foregoing notwithstanding, no savings associations currently exist. As a result, these potential costs to persons required to comply with the proposed rules are not probable. Stephany Trotti has further determined that for the first five years the proposed rules are in effect the proposed rules related to Changes Concerning Fees may result in costs to a financial institution other than a savings association that files an application with the department seeking to convert to a savings association charter. Specifically, a financial institution with an asset size in excess of \$1 billion seeking to convert to a savings association charter will be assessed an application fee of \$15,000 under the proposed rules versus the \$10,000 fee assessed under the existing rules, representing a cost of \$5,000. The department anticipates that any potential application from a financial institution seeking to convert to a savings association charter will have an asset size below \$1 billion and such financial institution will therefore incur in a fee that is equal to or lesser than the fee assessed under existing requirements. The department asserts it is unlikely a depository institution with an asset size in excess of \$1 billion will seek to convert to a savings association charter. As a result, these potential costs to persons required to comply with the proposed rules are not probable.

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules related to Changes Concerning Holding Companies require an increase in fees paid to the agency as discussed in such section. The proposed rules related to Changes Concerning Fees may result in an increase or decrease in fees paid to the agency as discussed in such section; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Holding Companies establish various requirements related to a savings association holding company as discussed in such section; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Loan Requirements have the effect of repealing existing rule requirements as discussed in such section. The proposed rules related to Changes Concerning Savings and Deposit Accounts have the effect of repealing existing rule requirements as discussed in such section. The proposed rules related to Changes Concerning Savings and Deposit Accounts have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required. The foregoing notwithstanding, the department includes in this proposal a cost note addressing potential although improbable costs to persons required to comply with the proposed rules. As a result, the department also includes in this proposal an economic impact statement and a regulatory flexibility analysis concerning such improbable costs. The department incorporates by reference the Probable Economic Costs to Persons Required to Comply with the Proposed Rules section above as if fully set forth herein. No rural communities are substantially affected by the proposed rules. With respect to small and microbusinesses, the proposed rules are designed to implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings associations regulated by the department. No savings associations currently exist, including any that would constitute a small or micro business for purposes of Government Code Chapter 2006, and it is unlikely that a savings association would constitute a small or micro-business. The potential economic costs imposed by the proposed rules relate to: application fees by a savings association or a financial institution seeking to convert to a savings association charter; and fees for a savings association to pay for the costs associated with conducting a special examination of a savings association. Such fees are designed to allow the department to recoup its costs of regulation and

ensure its compliance with Finance Code §16.003(c). Any potential alternative to recouping these costs from a small or micro-business would entail shifting such costs to the department's other regulated persons and those regulated persons paying a disproportionate share of the department's costs attributable to such regulated persons. As a result, the department asserts no viable alternative methods exist. The foregoing notwithstanding, the proposed rules include provisions allowing the commissioner to waive any costs or fees including with respect to a small or micro-business that may be adversely affected by the proposed rules.

Takings Impact Assessment

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

Public Comments

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

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §60.1, §60.2

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.2 is also proposed under

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 7 OF 56

the authority of, and to implement, Finance Code: §61.002; and §62.004(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.1. Purpose and Applicability.

This chapter governs the chartering, administration, and operations of a Texas-chartered savings and loan association under Finance Code Title 3, Subtitle B, the Texas Savings and Loan Act (Finance Code §61.001 et seq.).

§60.2. Definitions.

As used in this chapter, and in the commissioner's administration and enforcement of Finance Code Title 3, Subtitle B, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

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

(2) Affiliated person--

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

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

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

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

(i) is a director or officer;

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

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

(iv) in the case of a partnership, is a limited partner who, directly or indirectly, either alone or with his or her spouse and the members of their immediate family who are also affiliated persons of the savings association, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of a savings association, and their spouses and their immediate family members who are also affiliated persons of the savings association, owns an interest of 25% or more in the partnership; or

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

(E) any trust or other estate in which a director, officer, or controlling person of a savings association, or a member of the

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 8 OF 56

director's, officer's, or controlling person's immediate family, has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

(3) Application--An application requesting authorization or other relief from the commissioner pursuant to this chapter or under the Texas Savings and Loan Act for which a filing fee is required under §60.102 of this title (relating to Application Fees and Charges).

(4) Appropriate banking agency--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(5) Board--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

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

(7) Capital stock--Has the meaning assigned by the Texas Savings and Loan Act (Tex. Fin. Code §61.002).

(8) Capital stock association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

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

(10) Commissioner--The savings and

mortgage lending commissioner appointed under Finance Code Chapter 13.

(11) Company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

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

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

(B) is an officer or director of the company and owns, controls, or has the power to vote 10% or more of any class of voting securities of a company, and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities; or

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

(13) Controlling person--A person having control as defined by paragraph (12) of this section.

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

(15) Deposit account--A savings account, certificate of deposit, withdrawable deposit, demand deposit account, checking account, or any other term referring to the amount of money a savings association owes an account holder as a result of the deposit of money in the savings association.

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 9 OF 56

(16) Deposit liability--The aggregate amount of money shown by the books of the savings association to be owed to the savings association's bank deposit account holders after applying any legal or contractual reduction.

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

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

(19) Financial institution--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(20) GAAP--Generally Accepted Accounting Principles.

(21) Holding company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "savings and loan holding company."

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

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

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

(25) Issuer--The savings association that issued the security in question.

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

(27) Member--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(28) Mutual association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(29) Officer--The president, any vice president (but not an assistant vice president, second president, or other vice president having authority similar to an assistant or second vice president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any entity or organization, whether incorporated or unincorporated. The term "officer" includes the chairman of the board, if the savings association's certificate of formation or bylaws authorize the chairman to participate in the operating management of the entity or organization, or if the chairman actually participates in such management.

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

(31) Recourse-- A contract by a borrower

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 10 OF 56

or guarantor to repay 100% of all amounts due and owing under the loan.

(32) Savings Association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "association."

(33) Shareholder--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

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

(35) Surplus--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(36) Texas Savings and Loan Act--Finance Code Title 3, Subtitle B (Finance Code §61.001 *et seq.*).

(37) Unsafe and unsound practice--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002), and includes excessive operating expenses, excessive growth, high-risk or undiversified investment positions, and non-existent or poorly followed lending or underwriting policies, procedures, or guidelines.

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

(39) Withdrawal value--The net amount of money that may be withdrawn by an account holder from a deposit account.

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

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

◆ ◆ ◆

SUBCHAPTER B. APPLICATIONS
DIVISION 1. GENERAL PROVISIONS

7 TAC §§60.101 - 60.104

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §§60.101 - 60.103 are also proposed under the authority of, and to implement, Finance Code §66.002(3). 7 TAC §60.102 is also proposed under the authority of Finance Code: §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to filing an application or other documents with the department. 7 TAC §60.102 is also proposed under the authority of, and to implement, Finance Code: §62.001(a); §62.011; and §63.004(d). 7 TAC §60.103 is also proposed under the authority of, and to implement, Finance Code: §62.006(a)(1); and §62.353(a)(1). 7 TAC §60.104 is also proposed under the authority of, and to implement, Finance Code §61.006.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 11 OF 56

§60.101. Application Filing Requirements.

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

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

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

(d) Duty to Supplement. The applicant has a continuing obligation and duty to supplement the application with any other information or supporting documentation requested by the commissioner in writing. The applicant must provide any information or supporting documentation submitted in connection with any related application made to the appropriate federal banking agency, to the extent not previously provided to the Department.

(e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the

applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application). The commissioner may, in his or her sole discretion, require the applicant to republish the public notice.

§60.102. Application Fees and Charges.

(a) Filing Fees. An applicant must pay the following filing fees:

(1) Charter Application and Amendments.

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

(B) Change of name: \$500.

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

(2) Office Locations.

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

(B) Mobile facility: \$500, plus \$100 for each location where the mobile facility is to be conducting banking business for purposes of §60.132 of this title (relating to Mobile Facility).

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

(3) Reorganization, merger, consolidation, conversion, or purchase

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 12 OF 56

and assumption:

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

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

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

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

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

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

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

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

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

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

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

(6) Holding company registration: \$2,000.

(7) Investment in subsidiaries.

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

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

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

(D) Change of name: \$100.

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

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

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

(d) Fees Nonrefundable; Discretion to Waive Fees and Costs. All filing fees must be

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 13 OF 56

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

§60.103. Public Notice of Application.

If an application requires that notice to the public be given, such notice must comply with the requirements of this section. The notice must use language and content preapproved by the commissioner prior to publishing. The notice must be submitted to the publisher for publication within 15 days after the date the applicant receives notice that the application is complete and accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, within 10 days after publishing the notice, provide the commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§60.104. Motions for Rehearing.

A motion for rehearing pursuant to Finance Code §61.006 must be filed not later than the 14th day after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing, if any, not later than the 30th day after the date the decision or order that is the subject of the motion is signed. The commissioner must act on the motion for

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

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

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

◆ ◆ ◆

**DIVISION 2. CHARTER APPLICATIONS
AND AMENDMENTS**

7 TAC §§60.121 - 60.123

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.121 is also proposed to implement Finance Code: Chapter 62, Subchapter A; §62.152; and §66.002(3). 7 TAC §60.122 is also proposed under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.121. Savings Association Charter.

(a) Application Requirements. The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings association which must consist of at least five adult residents of this state and must include all of the

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 14 OF 56

information required by Finance Code §62.001. The application must include a request for a corporate name to be approved by the commissioner. The application must include the proposed home office of the savings association, the identity and qualifications of the proposed managing officer(s), and any additional information the commissioner deems necessary to enable the commissioner to determine the matters set forth in Finance Code §62.007.

(b) Identification of Home Office; Definition of Community; Temporary Office Location. The proposed location for the home office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in the Finance Code §62.007 means the geographical area surrounding the proposed location of the home office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business. The commissioner may approve the opening and operation of a temporary home office location for an approved charter, provided that such office is within the 1/2-mile radius of the permanent home office approved in the charter. If a temporary home office location is approved, the savings association must promptly cease operations at such office upon the permanent home office being constructed or rendered fit for occupancy, but in any event no later than 18 months from the date the charter was approved, unless extended in writing by the commissioner.

(c) Capital Requirements. No application to incorporate a savings association will be approved unless the commissioner determines the proposed savings association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the

FDIC or the amount required of a national bank. No savings association with an approved charter may open or do business as a savings association until the commissioner certifies that the commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings association in cash, free of encumbrance.

(d) Public Notice. A charter application is deemed to be a complete application for purposes of Finance Code §62.006 at the time the Department notifies the applicant that the application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings association will have its home office. Such notice, when properly effected, is deemed to be the commissioner's public notice of the application for purposes of Finance Code §62.006.

(e) Request for Hearing; Deadline to Protest. A person may protest or otherwise request a hearing on the application as provided by Finance Code §62.006. Any person desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.006 is deemed waived.

(f) Hearing. If a charter application is protested or a hearing on the application is otherwise requested, the commissioner will set a

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

(g) Time of Decision. To the extent a hearing on the charter application is required, the commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the charter application is not required, the commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by Finance Code §62.006 and subsection (e) of this section.

§60.122. Change of Name.

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

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application as provided by Finance Code §62.011. Any person

affected by the proposed name change and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (b) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Finance Code §62.011 only if the requested name change, if granted, would result in the savings association's name being substantially or deceptively similar to the party alleged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of their request indicating they are a person that might be affected by the proposed name change as provided by this section. The commissioner will review the request for hearing and determine, in his or her sole discretion, if the person might be affected so as to require a hearing under Finance Code §62.011.

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

(f) Time of Decision. To the extent a hearing on the application is required, the commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 16 OF 56

time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (c) of this section.

§60.123. Certificate of Formation or Bylaws Amendments.

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

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

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

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



DIVISION 3. OFFICE LOCATIONS

7 TAC §§60.131 - 60.133

Statutory Authority

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

associations. This proposal is also made under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.131. Branch Office.

(a) Approval Required. A savings association may not establish a branch office or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the commissioner. A branch office application is required if a savings association would like to establish and operate a courier/messenger service pursuant to §60.202 of this title (relating to Types of Additional Offices).

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

(1) proposed location for the office;

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

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

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

(c) Determination by commissioner. The commissioner will not approve the application unless the commissioner determines that:

(1) the operation and condition of

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 17 OF 56

the savings association affords no basis for supervisory objection;

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

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

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

(e) Identification of Branch Office; Definition of Community. The proposed location for the branch office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in Finance Code §62.008 means the geographical area surrounding the proposed location of the branch office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business.

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to

be located and in the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed branch office may protest or otherwise request a hearing on the branch office application as provided by Finance Code §62.011. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest within the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

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

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

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

§60.132. Mobile Facility.

(a) Approval Required. A savings association may not establish a mobile facility as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the commissioner.

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

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

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

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

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

(c) Determination by commissioner. The commissioner will not approve the application unless the commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met. Additionally, the savings association must show that adequate safeguards exist for the security of the mobile facility.

(d) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility will be operating and in the county where the savings association has its home office.

(e) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as provided by Finance Code §62.011. Any person affected by the proposed establishment of a mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

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

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 19 OF 56

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

§60.133. Relocate Home or Additional Office.

(a) Approval Required. A savings association may not move its home office or any additional office as provided by §60.202 of this title (relating to Types of Additional Offices) beyond its immediate vicinity without the prior written approval of the commissioner.

(b) Immediate Vicinity. The term "Immediate vicinity" as used in Finance Code §62.011 means the area within a radius of 1 mile from the present location of such office. However, if the office to be relocated has not been open for business at its present location for more than 2 years, approval in accordance with this section is required as if the office were not within the immediate vicinity. If the existing office has been open for more than 2 years, prior written notice must be provided to the commissioner describing the saving association's plans for the relocation, including the precise location for the new office, the date of the relocation, and information supporting that the new location of the office will be within the immediate vicinity of the present location and does not require the commissioner's approval.

(c) Relocation of Existing Offices. Notwithstanding subsection (a) of this section, a

savings association may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the commissioner prior written notice. Upon such notification, the establishment of such office is deemed to be an approved branch office of the savings association.

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

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

(2) a description of the land and building to be built or leased and terms thereof;

(3) estimates of the cost of removal to and maintenance of the new location;

(4) whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office;

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

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

(e) Determination by commissioner. The commissioner will not approve the application unless the commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met.

(f) Public Notice. An applicant seeking to

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 20 OF 56

change the location of the home or an additional office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is located, and the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or additional office location may protest or otherwise request a hearing on the application, as provided by Finance Code §62.011. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

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

(i) Time of Decision. To the extent a hearing on the application is required, the commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the

application is not required, the commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

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

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

◆ ◆ ◆

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

7 TAC §§60.141 - 60.145

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.141 is also proposed under the authority of, and to implement, Finance Code: Chapter 62, Subchapters B, H, and I; and §66.002(3). 7 TAC §60.142 is also proposed under the authority of, and to implement, Finance Code §62.353. 7 TAC §60.143 is also proposed under the authority of, and to implement, Finance Code: Chapter 62, Subchapter E; and §66.002(3). 7 TAC §60.144 is proposed under the authority of, and to implement, Finance Code: Chapter 62, Subchapter F; and §66.002(a)(3). 7 TAC §60.145 is also proposed under the authority of, and to implement, Finance Code: §62.002; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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

(a) Applicability. This section governs:

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

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

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

(1) the conversion of a savings association into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings association reorganizing into, or merging or consolidating with, a financial institution that is not a savings association, which is governed by section §60.143 of this title (relating to Reorganization, Merger or Conversion by a Savings Association to Another Financial Institution Charter); or

(2) the conversion by a financial institution that is not a savings association into a savings association, which is governed by section §60.144 of this title (relating to Conversion into a Savings Association).

(c) Plan Required. Any savings association seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a savings association must do so pursuant to a plan adopted by the board and filed with the commissioner as a part of an

application for approval. Purchase and assumption transactions include purchases of assets, deposit accounts, or other liabilities in bulk not made in the ordinary course of business.

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

(e) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition must publish a public notice of the plan and application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the commissioner's public notice of the plan and application for purposes of Finance Code §62.353.

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

have a hearing on the application under Finance Code §62.353 is deemed waived.

(g) Hearing. If a hearing is required, the commissioner will set a hearing on the plan and application within 60 days after the date the protest or request for hearing and the required fee are received, unless the commissioner determines that the provisions set forth in §60.142 of this title (relating to Exemption for Supervisory Merger) apply, and the merger is designated as a supervisory merger for purposes of Finance Code §62.353(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Government Code Chapter 2001 and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

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

(i) Transactions Involving Financial Institutions in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this section, a savings association may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state or territory. Each

such application must include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements have been satisfied. The commissioner will not approve such an application unless the commissioner determines that all requirements of this section have been met, and all applicable requirements of the laws of the state or territory in question have been met.

§60.142. Exemption for Supervisory Merger.

(a) The commissioner may designate a transaction under §60.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association) as a supervisory merger when:

(1) the commissioner has placed one or more of the savings associations involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings and Loan Act;

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

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

(b) For purposes of this section, unsafe condition means that the savings association is (or savings associations are) insolvent or in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation(s) of applicable law, rules, or regulations, or to any unsafe or

unsound practice or practices; or that the savings association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital; or that the savings association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the commissioner, or any agreement between the savings association and the commissioner; or that the savings association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings association by the commissioner or other duly authorized personnel of the Department; or any other condition affecting the savings association which the commissioner and the board agree place the savings association in an unsafe condition.

(c) Effect of Exemption. If the commissioner designates the transaction as a supervisory merger, the application and all information relating to the application are deemed confidential. As a result, the requirements of §60.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association), concerning public notice of the application, and a hearing on the application, are not applicable.

§60.143. Reorganization, Merger or Conversion by a Savings Association to Another Financial Institution Charter.

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

(b) The commissioner must be given written notice of the intention of the savings association to reorganize, merge, or convert no

less than 30 days prior to the proposed transaction.

(c) The savings association must file with the commissioner:

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

(2) a certified copy of all minutes of meetings of the board, shareholders, or members that relate to the transaction, including those reflecting approval to engage in the transaction by a majority vote of the shareholders of members;

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

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

(d) The commissioner is deemed to have consented to the reorganization, merger or conversion into another type of financial institution charter at the time the Department notifies the savings association that the filing made in accordance with this section is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon compliance with the provisions of this section and the granting of a successor charter by the appropriate banking agency, a copy of which must be filed with the commissioner, the savings association receiving the new charter ceases to exist as a savings association and will no longer be subject to the jurisdiction of the commissioner. The foregoing notwithstanding, the commissioner must receive

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 24 OF 56

the original charter certificate or a certified affidavit of lost certificate in order to be released from the requirement to pay annual assessments as provided by §60.251 of this title (relating to Annual Assessments.)

§60.144. Conversion into a Savings Association.

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

(b) Plan and Application. In order to obtain such authorization, the converting institution's board must approve and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings association will be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must be filed with the commissioner and mailed to the appropriate banking agency within 10 days after the date of its adoption. At the meeting to vote on a conversion to a savings association, the members or stockholders must also vote on the directors of the savings association. The proposed directors must execute an application for savings association charter as provided by Finance Code Chapter 62, Subchapter A, and §60.121 of this title (relating to Savings Association Charter).

(c) Review by commissioner; Approval. The commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the commissioner will approve the conversion if the commissioner determines that the converting

financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code Chapter 62, Subchapter A, and §60.121 of this title.

§60.145. Mutual to Stock Conversion.

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

(1) a plan of conversion;

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

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

(4) such other information the commissioner may require.

(b) The plan of conversion must provide:

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

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

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

(4) that the sale price of the shares

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 25 OF 56

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

(5) that the conversion must be completed within 24 months from the date the savings association members approve the plan of conversion;

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

(7) for an eligibility record date;

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

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

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

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

paragraph (6) of this subsection.

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

(d) Public Notice. An application for mutual to stock conversion is deemed to be a complete application at the time the Department notifies the applicant that application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which the savings association has an office, and must prominently post the notice in each of its offices.

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

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

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(g) Within 45 days:

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

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 26 OF 56

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

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

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

(j) The commissioner may grant a written waiver from any requirement of this rule that is not otherwise required by statute.

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

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

◆ ◆ ◆

DIVISION 6. CHANGE OF CONTROL

7 TAC §§60.161 - 60.165

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: Chapter 62, Subchapter L; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.161. Acquisition of a Savings Association.

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

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

(A) the background and identity of the applicant, if such applicant and any affiliate is an individual, or all individuals who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 27 OF 56

Such filing must contain the following information:

(i) name and address;

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

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

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

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

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual

was or is alleged to be in violation of any governmental agency statute or regulation, and if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the commissioner;

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

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

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

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

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

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

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

(I) copies of any contracts, agreements, or other documents which the commissioner determines are relevant to the review of the application; and

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

(2) If the person required to file the information required by paragraph (1) of this section is a partnership, limited partnership, syndicate, trust, or other group, the commissioner may require that the information must be given to:

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

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

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

(3) If the person required to file the information required by paragraph (1) of this section is a corporation, the commissioner may require that the information called for must be given with respect to such corporation and each

officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings association may not be consummated until the commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Finance Code §62.555 and §62.556. The commissioner will render a decision within 60 days after the application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The application will be denied if the commissioner finds any of the following:

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

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

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

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

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

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

(G) the applicant has not provided information pertinent to the application requested by the commissioner; or

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

§60.162. Notice and Hearing.

(a) Public Notice. An applicant timely requesting a hearing on the commissioner's decision to deny the application must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(b) Hearing. If a hearing is required, the commissioner will set a hearing on the denial within 60 days after the date the request for a hearing on the denial was received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9

of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(c) Time of Decision. To the extent a hearing on the commissioner's decision to deny the application is required, the commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be closed for purposes of Finance Code §62.556.

§60.163. Retention of Control.

(a) The following conditions affecting any controlled savings association, regardless of when or how such control has been acquired, are grounds for the commissioner to investigate, seek to enjoin, or set aside any change of control of a savings association, if the commissioner deems the transfer to be against the public interest:

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

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

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

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 30 OF 56

(c) When the commissioner determines reasonable cause exists to believe that a change of control may have taken place without prior approval, the commissioner may call a hearing to determine whether there has been in fact a change of control. If the commissioner finds by a preponderance of the evidence that such unauthorized control exists, the commissioner may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the commissioner may issue any other supervisory order the commissioner deems appropriate.

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

§60.165. Exempt Transactions.
The following transactions are exempt from the application requirements of this division:

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

subsection prevents such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

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

(3) acquisition of additional stock of a savings association by any person who has held power to vote 25% or more of any class of voting stock in such savings association continuously for the three-year period preceding such acquisition, or has maintained control of the savings association continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

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

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

♦ ♦ ♦

DIVISION 7. CAPITAL NOTES AND DEBENTURES

7 TAC §60.171

Statutory Authority

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

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 31 OF 56

associations. This proposal is also made under the authority of, and to implement, Finance Code §63.004(d).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.171. Capital Notes and Debentures.

(a) Approval Required. No savings association may issue and sell its capital notes or debentures without the prior written approval of the commissioner. The commissioner, in approving the issuance and sale, may impose any conditions the commissioner determines necessary with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

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

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

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

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

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

◆ ◆ ◆

DIVISION 8. HOLDING COMPANY APPLICATIONS

7 TAC §60.181

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §66.002(3); §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.181. Registration.

A holding company must apply and register with the commissioner not later than the 90th day after the date the company becomes a holding company. The application must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the commissioner finds necessary and appropriate. On written request, the commissioner may, in his or her sole discretion, extend the time within which a holding company is required to register and file the required information.

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 32 OF 56

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

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

◆ ◆ ◆

DIVISION 9. SUBSIDIARY APPLICATIONS

7 TAC §60.191

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §64.001; §64.002(18) and (19); and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.191. Subsidiary Application.

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

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

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

(3) a certified copy of the

certificate of formation and bylaws of the proposed subsidiary;

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

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

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

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

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

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

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

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

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

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

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 33 OF 56

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

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

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

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

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

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



SUBCHAPTER C. OPERATIONS
DIVISION 1. OFFICE LOCATIONS

7 TAC §§60.201 - 60.204

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code §62.011.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

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

(a) Approval Required. No savings association may establish, maintain, or relocate its home office, or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices), without the prior written approval of the commissioner, except as otherwise provided by §60.133 of this title (relating to Relocate Home or Additional Office).

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

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

(d) Closing an Office. Before closing an approved branch or other office, other than a temporary closure as provided by §60.203 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure as provided by Finance Code §63.009, a savings

association must comply with the notice requirements of federal law, and provide the commissioner with a copy of the closing notice filed with the appropriate federal banking agency, if applicable, upon filing such notice. A savings association must provide the commissioner with confirmation within 10 days after the actual closing date. Once closed, prior written approval from the commissioner to operate a branch or other office is deemed revoked, and a savings association may not reopen the branch or other office without seeking new approval from the commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings association, or any combination thereof, may be performed at a location other than the home or a branch office and such location does not constitute an "additional office" requiring notice to or the prior approval of the commissioner for purposes of Finance Code §62.011:

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

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

(3) Administrative activities (administrative offices). A savings association may establish or maintain administrative offices

to perform the internal operations of the institution, provided the savings association does not conduct banking activities.

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

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

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

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

§60.202. Types of Additional Offices.

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

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 35 OF 56

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

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

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

§60.203. Temporary Closing of Additional Offices.

In the event a savings association closes any additional office of any type on a temporary basis, such office must be reopened within 12 months or less, unless otherwise extended by written authorization of the commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the commissioner, if applicable, the commissioner's approval to establish such office for purposes of §60.201 of this title (relating to Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be provided to the commissioner no later than 10 days after such closing, and the office may not reopen until the commissioner receives written notification at least 10 days before such reopening.

§60.204. Operation of a Mobile Facility.

Mobile facilities must be operated consistent with the following requirements:

(1) Such facility may be operated only at locations approved by the commissioner, each of which must at all times be appropriately identified at the site and on the facility and

located within 100 miles of the savings association's home office or a branch office.

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

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

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

♦ ♦ ♦

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

7 TAC §§60.221 - 60.227

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.221 is also proposed under the authority of, and to implement, Finance Code: §66.002(4) and (6); and §66.053. 7 TAC §60.222 is also proposed under the authority of, and to implement, Finance Code §66.002(5). 7 TAC §60.223 is also proposed under the authority of, and to implement, Finance Code: §66.002(8); and §66.051. 7 TAC §60.225 is also proposed under the authority of, and to implement, Finance Code §66.002(10). 7 TAC §60.226 is also proposed under the authority of, and to implement, Finance Code §66.051. 7 TAC

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 36 OF 56

§75.227 is also proposed under the authority of, and to implement, Finance Code: §62.051(b)(2); §62.007(b)(3); §62.010; §62.106; and §62.151(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.221. Books and Records.

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

§60.222. Accounting Practices.

A savings association must use such forms and observe such accounting principles and practices as the commissioner may require from time to time.

§60.223. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, no later than 90 days after its fiscal year end, each savings association is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3, with the exception of any matters specifically addressed by this section, the Texas Savings and Loan Act, or the rules (regulations) adopted thereunder.

§60.224. Misdescription of Transactions.

A savings association may not, either directly or indirectly, knowingly make any entry on its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction.

§60.225. Charging Off or Setting Up Reserves Against Bad Debts.

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

§60.226. Examinations.

(a) The commissioner will examine each savings association once in each year, or more frequently if the commissioner determines that the condition of the savings association justifies more frequent attention to enforce the Texas Savings and Loan Act. The commissioner may defer an examination for not more than six months if the commissioner considers the

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 37 OF 56

deferment appropriate to the efficient enforcement of the Texas Savings and Loan Act and consistent with the safe and sound operation of the institution.

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

§60.227. Bylaws.

(a) The bylaws of a savings association must contain sufficient provisions to govern the institution in accordance with the Texas Savings and Loan Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board. Bylaw amendments may not take effect before being filed with and approved by the commissioner in accordance with §60.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

(b) A savings association is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Business Organizations Code to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the savings association.

(c) Other optional bylaws may be adopted by a savings association with the approval of the commissioner obtained in accordance with §60.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

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

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

◆ ◆ ◆

DIVISION 3. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§60.231 - 60.234

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.231 and §60.232 are proposed under the authority of, and to implement, Finance Code: §62.002(b); §62.003(b); §62.052(c); §62.152; and §66.002(1) and (2). 7 TAC §60.233 is also proposed under the authority of, and to implement, Finance Code Chapter 66, Subchapter C. 7 TAC §60.234 is also proposed under the authority of, and to implement, Finance Code §63.004(d).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.231. Capital Requirements.

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

commissioner may approve in writing for inclusion as capital.

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

§60.232. Increase or Decrease of Minimum Capital Requirements.

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

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

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

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

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

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

or supervisory process;

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

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

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

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

for approval.

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

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

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

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings association undergoes a change of control or a material change in management that was not approved by the commissioner;

(4) the savings association engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the commissioner at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings association engages in unsafe and unsound practices, violates any provision of its certificate of formation or bylaws, or violates any law, rule, or supervisory order applicable to the savings association or any condition that the commissioner has imposed upon the savings association by written order or

agreement; or

(7) the savings association fails to submit the reports required by this section.

§60.233. Business Plans.

(a) All savings associations whose operations are considered by the commissioner unsafe or unsound or that have total capital less than the amount required under §60.231 of this title (relating to Capital Requirements) or §60.232 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan must be at least 1 year but may be for so long as the commissioner may require.

(b) The savings association's business plan will be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board, at least annually.

§60.234. Joint Issuance of Capital Obligations.

Joint Issuance of Capital Obligations. On the same terms and conditions as stated in §60.171 of this title (relating to Capital Notes and Debentures), a savings association may, by resolution of its board and with prior approval of the commissioner, join other savings associations in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations.

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

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



DIVISION 4. HOLDING COMPANIES

7 TAC §§60.241 - 60.245

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.241. Reports.

Each holding company and each subsidiary of a holding company, other than a savings association, must file with the commissioner reports required by the commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the commissioner may require. A holding company must file with the commissioner copies of any filings, documents, statements, or reports required to be filed with the appropriate federal banking agency, unless such filing, document, statement, or report is publicly available.

§60.242. Books and Records.

Each holding company must maintain books and records as may be prescribed by the commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

§60.243. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the commissioner may prescribe. The holding company or the savings association must pay the cost of an examination. The confidentiality provisions of Finance Code §89.052 apply to an examination performed in accordance with this section, however, the commissioner may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the commissioner, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§60.244. Agent for Service of Process.

The commissioner may require a holding company or a person other than a corporation connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§60.245. Release from Registration.

The commissioner at any time, on the commissioner's own motion or on written request, may release a registered holding company from a registration made by the company if the commissioner determines that the company no longer controls a savings association. If released, the savings association associated with the holding company must maintain the books and records of such holding company.

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

Iain A. Berry
General Counsel

Department of Savings and Mortgage Lending



DIVISION 5. ASSESSMENTS AND FEES

7 TAC §60.251, §60.252

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations; §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to the supervision and examination of savings banks. 7 TAC §60.252 is also proposed under the authority of, and to implement, Finance Code §66.052(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.251. Annual Assessments.

(a) Annual assessment. All savings associations chartered under the laws of the state and all foreign savings associations (as defined by the Texas Savings and Loan Act in defining “foreign association”) holding a certificate of authority to do business in this state must pay to the department an annual assessment fee in an amount determined by the commissioner as provided by subsection (c) of this section in accordance with the rate requirements set by the Finance Commission of Texas, and subject to the maximum assessment rates established by subsection (d) of this section. The Department will maintain on its website information

concerning current rate requirements.

(b) Payment of Assessment. The annual assessment must be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings association must pay the assessment fee by electronic/ACH payment, or by another method, if directed to do so by the Department.

(c) Determination of Assessment. The assessment will be determined based on the total assets of the savings association. The valuation of assets will be determined as of the close of the calendar quarter immediately preceding the effective date of the assessment.

(d) Maximum Assessment Rates. The assessment rates set by the Finance Commission of Texas may not exceed the maximum rates established in the following rate schedule:

Figure: §60.251(d).pdf

§60.252. Fee for Special Examination.

(a) A special examination is one that is conducted outside the context of a savings association's annual examination and includes, but is not limited to, examinations of a savings association holding company, and interstate branches of savings associations in Texas as the host state. The savings association or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(b) The fee for a special examination under this section will be calculated at a rate not to exceed \$75 per examiner per hour. The entity

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 42 OF 56

that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(c) In connection with an examination under this section, the regulated entity or other legally responsible party must pay the examination fee and costs incurred as provided by this section.

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

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



DIVISION 6. COMPLAINT PROCEDURES

7 TAC §60.261

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §13.011(a); and Chapter 66, Subchapter C.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.261. Savings Association Complaint Notices.

(a) Definitions.

(1) Privacy notice means any notice which a state savings association gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) Required notice means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings associations must use the following notice: The (name of state savings association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings association) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone: (877) 276-5550, Fax: (512) 936-2003, or through the Department's website at www.sml.texas.gov.

(2) A required notice must be included in each privacy notice that a state savings association sends out.

(3) Regardless of whether a savings association is required by any state or federal law to give privacy notices, each savings association must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 43 OF 56

deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings association conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings association must give the required notice when the customer relationship is established.

(C) The required notice must be posted on each website of the savings association that is accessible by the public and either used to conduct banking activities or from which the savings association advertises to solicit such business. The required notice is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page.

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

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

◆ ◆ ◆

SUBCHAPTER D. LOANS, INVESTMENTS,
SAVINGS, AND DEPOSITS
DIVISION 1. AUTHORIZED LOANS AND
INVESTMENTS

7 TAC §§60.301 - 60.309

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §64.001; and §64.002. 7 TAC §60.303 is also proposed under the authority of, and to implement, Finance Code Chapter 64, Subchapter E.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.301. Definitions.

As used in this division, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Commercial real estate--Land on which structures or improvements do not qualify the property as residential real estate are located.

(2) Home--A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas around town houses or condominium units which are incidental to ownership of the residence.

(3) Home improvement loan--Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 44 OF 56

(4) Interim construction loan--A loan made to finance the improvement of or the building of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans.

(5) Manufactured home--A structure, transportable in one or more sections, which in the traveling mode is 8 feet or more in width or and 40 feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(6) Personal property--Tangible and intangible property that is not real property, including the following items as defined in the Texas Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

(7) Residential real estate--Land on which a house, a home, or an apartment house is located, including combinations of farm residences and commercial farm real estate.

(8) Unimproved real estate--Land which has no substantial improvements or utilities. All other real estate will be considered either residential real estate or commercial real estate.

§60.302. Loans Authorized.

(a) A savings association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans or participations subject to the requirements of the Texas Savings and Loan Act, and this subchapter, including:

(1) residential real estate loans, including loans on the security of leasehold interests in residential real estate;

(2) home improvement loans;

(3) manufactured home loans,;

(4) interim construction loans;

(5) other real estate loans, including loans on the security of leasehold interest in real estate;

(6) personal property loans;

(7) commercial real estate loans, including loans on the security of leasehold interest in real estate;

(8) non-real estate commercial loans;

(9) loans fully secured by savings accounts owned or otherwise pledged for or by the borrower;

(10) unsecured loans; and

(11) loans which are insured or guaranteed by the United States or any instrumentality thereof.

(b) Parity. A savings association may purchase or commit to purchase any loan it could make if it were incorporated and operating as a federal savings association domiciled in this state, so long as for each such transaction the savings association complies with all applicable regulations governing such activities by federal savings banks. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

§60.303. Local Service Area Investment Requirement.

(a) A savings association must ensure compliance with the local service area investment requirements set forth in Finance Code Chapter 64, Subchapter E.

(b) Local Service Area. A savings association's "local service area" means the geographical area designated by the commissioner under Finance Code §64.082. A savings association's local service area is deemed to include any zip code for which any portion of the zip code is located within the 50-mile radius of the home office or any branch office of the savings association and is deemed to be removed from the local service area at the time such office permanently closes.

(c) Categories of Assets and Investments. The following categories of assets and investments constitute loan and investments for purposes of Finance Code §64.081:

(1) first and second lien residential mortgage loans or foreclosed residential mortgage loans secured by real estate located in the local service area;

(2) home improvement loans concerning real estate located in the local service area;

(3) interim residential construction loans concerning real estate located in the local service area;

(4) mortgage-backed securities collateralized by loans secured by real estate located in the savings association's local service area; and

(5) loans for community reinvestment purposes concerning a community

located in the local service area.

(d) For purposes of identifying qualifying assets and investments under this section:

(1) Mortgage-backed securities includes mortgage-back bonds, mortgage pass-through securities, collateralized mortgage obligations, and such other securities determined by the commissioner to be collateralized by first or second lien residential mortgages.

(2) It is the responsibility of the savings association to capture and maintain information and documentation to support a mortgage back security as being collateralized by loans secured by real estate located in the local service area.

(3) A qualifying loan or investment includes the loans sold by the savings association or any subsidiary (including finance subsidiaries) within the preceding 12 months that otherwise meet the requirements of this section.

(e) Any request by a savings association for a waiver under Finance Code §64.084 must be accompanied by a written explanation and justification as to why qualifying loans are not available in saving association's local service area.

§60.304. Unsecured Loans.

(a) A savings association may make unsecured loans or purchase participations in unsecured loans, on the terms and in amounts consistent with the savings association's lending policies, subject to the limitations of this section.

(b) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for real estate or personal property loans, so long as all

requirements of this section are met.

§60.305. Loan Policies and Documentation.

(a) Policies. Each savings association must establish written policies approved by its board establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board; take adequate account of concentration of credit risk; and are appropriate to the size of the savings association and the scope of its lending activities.

(b) Loan Documentation Standards. Loan documentation standards must be established and maintained to enable the savings association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness

intent of this section which the savings association may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date within 180 days before the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, and any conditions of approval;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 47 OF 56

requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings association);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings association as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings association arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title (Finance Code §301.001 et seq.).

(c) Unsecured Loans. Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (b)(1) and (3) - (7) of this section.

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(e) Closing Agent. A savings association may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents must be forwarded to the savings association within 5 business days after closing, or immediately after recording, for those documents which require filing of record.

(f) Permanent Loan File Requirements.

(1) Loan documentation must be in the possession of the savings association or an escrow agent designated by the savings

association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records must be placed in one permanent loan file immediately upon receipt by the savings association.

(2) The permanent loan file required by this section must be located at an office of the savings association. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings association's discretion. Files for loans which are fully secured by accounts at the association may be maintained at the office where the loan was originated.

(3) The permanent loan file must contain evidence that the savings association obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings association's interest therein. This requirement does not apply to loan participations purchased by the savings association.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw must be part of the permanent file.

(5) When a savings association purchases whole loans or participations in loans, it must cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement must be a part of the permanent file. The savings association must obtain a certification from the seller of the loan or participation that the seller is in possession of

all documents required by this section.

(g) The records of the savings association must reflect that the board has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings association and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings association. Loans originating in branch offices, loan offices, or agencies must be approved in the same manner as loans originating in the principal office.

(h) A savings association must maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§60.306. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees are subject to the requirements of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. The Department will monitor and enforce compliance with such provisions.

§60.307. Letters of Credit.

A savings association may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements:

(1) The savings association must maintain a letter of credit register containing name of customer, address, amount of credit extended, and identifying number.

(2) Each letter of credit must conspicuously state that it is a letter of credit or must be conspicuously entitled as such.

(3) The savings association's undertaking must contain a specified expiration date or be for a definite term and must be limited in amount.

(4) The savings association's obligation to pay arises only upon presentation of a draft and other documents as specified in the letter of credit and there is no obligation on the part of the savings association to determine questions of fact or law at issue between the account party and the beneficiary.

(5) The savings association must obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit.

(6) Each letter of credit's terms is subject to the limitations and documentation requirements to the same extent as if it were a loan made under this chapter.

(7) An appropriate fee may be collected for each letter of credit issued.

§60.308. Investment in Securities.

(a) A savings association is deemed to have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the FDIC; in stock or obligations of a national mortgage

association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the FDIC; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings association's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the commissioner.

(b) A savings association investing in securities under this section must ensure that the securities are delivered to the savings association, or for the savings association's account to a custodial agent or trustee designated by the savings association, within 3 business days after paying for or becoming obligated to pay for the securities. The savings association may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the FDIC, any financial institution legally exercising trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings association must ensure that it receives a custodial or trust receipt for the securities within 3 business days of the delivery of the securities.

(c) No savings association or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other securities of

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 50 OF 56

any affiliated person without the prior written approval of the commissioner.

(d) No savings association or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings association.

(e) Investments in equity securities.

(1) A savings association or any service corporation, operating subsidiary, or finance subsidiary of a savings association may not invest in stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings association may invest in stock or equity securities unless the securities are eligible investments for federal associations.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings association.

(f) A savings association may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

§60.309. Investment in Banking Premises and Other Real Estate Owned.

(a) A savings association may not,

without prior written consent of the commissioner, invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) A savings association may not acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association, or for the use of the savings association in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings association's facilities not improved and occupied as banking facilities within 5 years from the date of its acquisition must be sold or otherwise disposed of. Existing bank facilities must be sold or otherwise disposed of within 5 years of the date the real estate ceases to be used for banking purposes. The commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association may be held by a savings association for no more than 5 years, unless the commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings association must substantiate the market value of the real estate by obtaining an appraisal within 90 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is \$500,000 or less. The commissioner may, for

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 51 OF 56

good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings association acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than 1 year old.

(g) An evaluation must be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal must be made at least once every 3 years on real estate with a recorded book value in excess of \$500,000.

(h) Notwithstanding any other provision of this section, the commissioner may require an appraisal of real estate if the commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the FDIC in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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

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

◆ ◆ ◆

DIVISION 2. SUBSIDIARIES

7 TAC §§60.321, 60.323 - 60.326

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code §64.002(18) - (20).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.321. Investment in and Divestiture of Subsidiaries.

(a) A savings association may, only after prior written approval of the commissioner, invest in a subsidiary.

(b) Subsequent to obtaining approval for its initial investment and activity, a subsidiary may not engage in additional or substitute activities without the prior written approval of the commissioner.

(c) A savings association may, with prior written approval of the commissioner, divest itself of a subsidiary or merge or consolidate the subsidiary with another company if the commissioner finds that the terms and conditions of the transaction are in the best interests of the savings association.

§60.323. Authorized Subsidiary Investments.

(a) Activities of a subsidiary must consist of one or more of the following:

(1) loan origination, purchasing, selling, and servicing;

(2) acquisition of unimproved real estate lots and other unimproved real estate for

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 52 OF 56

the purpose of prompt development and subdividing;

(3) purchasing, selling, owning, renting, leasing, managing, subdividing, improving, operating for income, or otherwise dealing in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures);

(4) acquisition of improved residential real estate and mobile home lots to be held for sale or rental;

(5) acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(6) maintenance and management of rental real estate;

(7) serving as real estate brokers;

(8) serving as insurance broker or agent;

(9) engaging in or owning an interest in insurance companies engaged in the property, casualty, fire and marine, life, health and accident, title, fidelity, guaranty, and surety insurance business;

(10) serving in the capacity of trustee under deeds of trust or escrow agent;

(11) preparation of state and federal tax returns for the savings association's accountholders and/or borrowers;

(12) acquisition, maintenance, and management of real estate to be used for savings association offices and related facilities;

(13) investing in obligations of, or guaranteed as to principal and interest by, the United States or this state, and in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state;

(14) investing in venture capital through small business investment corporations; and

(15) other activities which may be approved by the commissioner.

(b) A subsidiary may not, without prior approval of the commissioner, invest in the stock of any savings and loan association or savings bank.

(c) A subsidiary may not receive payments on new or established savings accounts or pay out withdrawals of monies from savings accounts, and may not perform any duties for the savings association other than those specifically authorized in this section.

(d) The savings association must maintain the originals of all documents relating to the activities of its subsidiaries that do not require prior approval by the commissioner, which documents must be made available at all times to state and federal supervisory authorities for examination and review.

§60.324. Subsidiary Operations.

(a) The savings association must obtain prior written approval of the commissioner for the establishment and location of the home office, and any branch office, agency office, or

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 53 OF 56

any other office or facility of the subsidiary, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments must be furnished to the savings association within 30 days from date of execution.

(c) The subsidiary must furnish, at the expense of the subsidiary or parent savings association or its holding company, an independent appraiser's report or other expert opinion as determined to be necessary by the commissioner for the purpose of establishing the value of any investments made by the subsidiary.

(d) Each subsidiary must maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the subsidiary from such loss. Coverage as an additional insured entity under a fidelity bond of the parent savings association or its holding company may satisfy this requirement.

(e) All directors of the savings association and subsidiary must furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(f) Each subsidiary must maintain books and records as may be prescribed by the commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

§60.325. *Subsidiary Investment and Debt Limitation.*

Investment in subsidiaries is deemed to include investment in the subsidiary's capital stock, paid-in capital, subordinated debentures, unsecured

loans, advances, contingencies, and other obligations (excluding secured conforming loans), and may not, in the aggregate, exceed 10% of the savings association's total assets without prior approval.

§60.326. *Operating Subsidiaries.*

A savings association is authorized to invest in operating subsidiaries, the activities of which are exclusively limited to activities which could be conducted directly by the parent savings association. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings association, operating subsidiary investment is not limited by the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §60.325 of this title (relating to Subsidiary Investment and Debt Limitation). Notwithstanding this exclusion, all other provisions of this chapter applicable to a subsidiary apply equally to an operating subsidiary.

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

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

◆ ◆ ◆

DIVISION 3. SAVINGS AND DEPOSITS

7 TAC §60.331

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations; and §59.310, requiring the

PROPOSED NEW RULES
7 TAC CHAPTER 60
PAGE 54 OF 56

commission to adopt rules to implement Finance Code Chapter 59, Subchapter D. This proposal is also made under the authority of, and to implement Finance Code Chapter 59, Subchapter D.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.331. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.301, have the same meanings assigned by such section.

(b) Measurement of Candle Foot Power. For purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by Landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator must notify the landlord in writing of the requirements of the Finance Code Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety Evaluations.

(1) The owner or operator of an unmanned teller machine must evaluate the safety of each machine on a periodic basis no less frequently than annually.

(2) The scope of the safety evaluation must include, at a minimum, the factors identified in Finance Code §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices must furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Texas Business & Commerce Code §322.008.

(1) When Notice is Required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed. If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of Notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and

protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of

websites instead of just closing the web browser;
and

◆ ◆ ◆

(J) other
recommendations that the issuer reasonably
believes are appropriate to facilitate the security
of its unmanned teller machine customers.

(f) Video Surveillance Equipment. Video
surveillance equipment is not required to be
installed at all unmanned teller machines. The
owner or operator must determine whether video
surveillance or unconnected video surveillance
equipment should be installed at a particular
unmanned teller machine site, based on the safety
evaluation required under Finance Code §59.308.
If an owner or operator determines that video
surveillance equipment should be installed, the
owner or operator must provide for selecting,
testing, operating, and maintaining appropriate
equipment.

(g) Unmanned Teller Machines Located
in a Bank Vestibule. The provisions of the
Finance Code Chapter 59, Subchapter D, and this
section are applicable to an unmanned teller
machine located in a bank vestibule if there is 24-
hour access to the vestibule from outside the
building.

(h) Certification of Compliance. The
security officer of each depository must certify
compliance with the Finance Code Chapter 59,
Subchapter D, and this section on a basis no less
frequently than annually.

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

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

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

MAXIMUM ANNUAL ASSESSMENT RATE SCHEDULE

Assets Over	Not Over	Amount	Plus	Over
\$0	\$2 million	\$5,548	0.000000000	\$0
2 million	20 million	5,548	0.000219058	2 million
20 million	100 million	9,491	0.000175245	20 million
100 million	200 million	23,510	0.000113940	100 million
200 million	1 billion	34,900	0.000096381	200 million
1 billion	2 billion	112,004	0.000078857	1 billion
2 billion	6 billion	190,861	0.000070094	2 billion
6 billion	20 billion	471,237	0.000059643	6 billion
20 billion	40 billion	1,306,239	0.000044928	20 billion
40 billion	250 billion	2,204,799	0.000035103	40 billion
250 billion		9,576,429	0.000034751	250 billion

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 61, Concerning Hearings, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 61 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 61 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 61 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 61. HEARINGS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 61, as follows: §§61.1 - 61.3. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 61.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

the state because the department does not contribute to the state's general revenue fund.

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 61; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 61; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as

provided by Government Code §2007.043 is not required.

Public Comments

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

7 TAC §§61.1 - 61.3

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§61.1. Hearings Officer.

§61.2. Rules of Procedure for Contested Hearings.

§61.3. Publication of Hearings Notice.

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

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

◆ ◆ ◆

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 63, Concerning Fees and Charges, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 63 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 63 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 63 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 63. FEES AND CHARGES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 63, as follows: §§63.1 - 63.9, 63.11 - 63.13, and 63.15. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 63.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

the state because the department does not contribute to the state's general revenue fund.

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 63; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 63; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as

provided by Government Code §2007.043 is not required.

Public Comments

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

7 TAC §§63.1 - 63.9, 63.11 - 63.13, 63.15

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§63.1. Fee for Charter Application.

§63.2. Fee for Branch Office.

§63.3. Fee for Mobile Facility.

§63.4. Fee for Change of Name or of Location.

§63.5. Fee for Special Examination or Audit.

§63.6. Fee for Corporate Document Amendments.

§63.7. Fee for Permission to Issue Capital Obligations.

§63.8. Annual Fee to do Business.

§63.9. Fee for Reorganization, Merger, and Consolidation.

§63.11. Fee for Change of Control.

§63.12. Fee for Subsidiaries.

§63.13. Fee for Charter Application under §62.051.

§63.15. Fees for Public Information Requests.

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

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

◆ ◆ ◆

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 64, Concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 64 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 64 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 64 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 64. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, COMPLAINTS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 64, as follows: §§64.1 - 64.10. This proposal and the rules sections as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the

department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 64.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not

require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 64; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 64; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result,

preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

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

7 TAC §§64.1 - 64.10

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§64.1. Location of Books and Records.

§64.2. Accounting Practices.

§64.3. Reproduction and Destruction of Records.

§64.4. Financial Statements; Annual Reports.

§64.5. Misdescription of Transactions.

§64.6. Charging Off or Setting Up Reserves Against Bad Debts.

§64.7. Capital Requirements.

§64.8. Waiver of Minimum Net Worth Requirements.

§64.9. Examinations.

§64.10. Savings and Loan Association Complaint Notices.

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

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

◆ ◆ ◆

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 65, Concerning Loans and Investments, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 65 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 65 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 65 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 65. LOANS AND INVESTMENTS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 65, as follows: §§65.1 - 65.21, 65.23, and 65.24. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 65.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 65, §§65.4 - 65.10, 65.13, 65.14, 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included in the department's related proposal concerning proposed new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register*.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

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

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 65; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 65. The foregoing notwithstanding, the proposed rules related to Changes Concerning Loan Requirements do have the effect of repealing an existing rule requirement by purposely not proposing new rules to adopt the subject matter of existing 7 TAC §§65.4 - 65.10, 65.13 - 65.15, 65.20, and 65.23 in connection with the department's proposal to consolidate the subject matter of the existing rules in Chapter 65 into 7 TAC Chapter 60; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

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

Public Comments

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

7 TAC §§65.1 - 65.21, 65.23, 65.24

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§65.1. Types of Loans, Letters of Credit, and Investments Authorized.

§65.2. Loans and Investments Made under Prior Rules and Purchases of Such Loans or Participations Therein.

§65.3. Definitions.

§65.4. Limitations on Aggregate Loans to One Borrower.

§65.5. Residential Real Estate Loans.

§65.6. Commercial Real Estate Loans.

§65.7. Unimproved Real Estate Loans.

§65.8. Personal Property Loans.

§65.9. Oil and Gas Loans.

§65.10. Wrap-around Real Estate Loans.

§65.11. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

§65.12. Unsecured Loans.

§65.13. Manufactured Home Loans.

§65.14. Home Improvement Loans.

§65.15. Acquisition, Development, and Construction Loans.

§65.16. Interim Construction Loans.

§65.17. Loan Policies and Documentation.

§65.18. Letters of Credit.

§65.19. Investments in Real Property.

§65.20. Investments in Deferred Payment Obligations.

§65.21. Investment in Securities.

*§65.23. Restrictions on Loan Transactions with
Third Person.*

*§65.24. Local Service Area Investment
Requirement.*

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

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

◆ ◆ ◆

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 67, Concerning Savings and Deposit Accounts, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 67 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 67 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 67 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 67, as follows: §§67.1 - 67.3, 67.6 - 67.13, 67.15, and 67.17. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 -

65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 67.

Changes Concerning Savings and Deposit Accounts

The department's existing rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such existing rules is not included in the department's related proposal concerning proposed new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register*.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

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

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 67; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 67. The foregoing notwithstanding, the proposed rules related to Changes Concerning Savings and Deposit Accounts do have the effect of repealing an existing rule requirement by purposely not proposing new rules to adopt the subject matter of existing §§67.1 - 67.3, 67.6 - 67.13, and 67.15 in connection with the department's proposal to consolidate the subject matter of the existing rules in Chapter 67 into 7 TAC Chapter 60; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

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

Public Comments

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

7 TAC §§67.1 - 67.3, 67.6 - 67.13, 67.15, 67.17

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§67.1. Distribution or Payment of Dividends or Interest.

§67.2. Account Balance to Which Dividends or Interest Are Applied.

§67.3. Method of Computing Interest.

§67.6. Provisions for Distribution of Earnings on Other Than Regular Accounts.

§67.7. Notice Prior to Withdrawal.

§67.8. Deposit Accounts.

§67.9. Provisions for Issuance of Secured or Unsecured Capital Obligations.

§67.10. Joint Issuance of Capital Obligations.

§67.11. Required Average Daily Balance of Liquid Assets; Failure to Meet Requirement.

§67.12. NOW Accounts.

§67.13. Checking Accounts.

§67.15. Noninterest-Bearing Deposit Accounts.

§67.17. User Safety at Unmanned Teller Machines.

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

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

◆ ◆ ◆

11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 69, Concerning Reorganization, Merger, Consolidation, Acquisition, and Conversion, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 69 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 69 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 69 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 69. REORGANIZATION, MERGER, CONSOLIDATION, ACQUISITION, AND CONVERSION

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 69, as follows: §§69.1 - 69.11. This proposal and the rules sections as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it

should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 69.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or

the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 69; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 69; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as

provided by Government Code §2007.043 is not required.

Public Comments

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

7 TAC §§69.1 - 69.11

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§69.1. Filing of Plan.

§69.2. Form and Content of Application.

§69.3. Use of Approved Forms.

§69.4. Notice and Hearing.

§69.5. Publication.

§69.6. Time of Decision.

§69.7. Denial and Appeal.

§69.8. Exemption for Supervisory Merger.

§69.9. Designation as Supervisory Merger.

§69.10. Acquisitions Involving Associations in Other States or Territories.

§69.11. Conversion into another Financial Institution Charter.

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

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

♦ ♦ ♦

12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 71, Concerning Change of Control, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 71 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 71 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 71 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 71. CHANGE OF CONTROL

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 71, as follows: §§71.1 - 71.8. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 71.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

the state because the department does not contribute to the state's general revenue fund.

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 71; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 71; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as

provided by Government Code §2007.043 is not required.

Public Comments

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

7 TAC §§71.1 - 71.8

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§71.1. Introduction.

§71.2. Definitions.

§71.3. Acquisition of an Association.

§71.4. Hearings.

§71.5. Retention of Control.

§71.6. Application for Approval of the Acquisition of Control of a Savings and Loan Association.

§71.7. Abeyance of Other Applications.

§71.8. Exempt Transactions.

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

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

♦ ♦ ♦

13. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeals in 7 TAC, Part 4, Chapter 73, Subsidiary Corporations, Resulting from Rule Review

PURPOSE: The purpose of the repeals in 7 TAC Chapter 73 is to implement changes resulting from the Department's periodic review of its rules, conducted pursuant to Government Code §2001.039. An explanation of and justification for the rules is contained in the proposed preamble for the rule proposal.

RECOMMENDED ACTION: The Department recommends that the Finance Commission approve publication of the repeals in 7 TAC Chapter 73 for comment in the *Texas Register*.

RECOMMENDED MOTION: I move that the Finance Commission approve publication of the repeals in 7 TAC Chapter 73 for comment in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. CHARTER APPLICATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 73, as follows: §§73.1 - 73.6. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Account Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the

subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 73.

Other Modernization and Update Changes.

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

Fiscal Impact on State and Local Government

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

the state because the department does not contribute to the state's general revenue fund.

Public Benefits

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

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

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

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

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 73; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 73; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as

provided by Government Code §2007.043 is not required.

Public Comments

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

7 TAC §§73.1 - 73.6

Statutory Authority

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

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

*§73.1. Investment in and Divestiture of
Subsidiary Corporations.*

§73.2. Application.

§73.3. Authorized Subsidiary Investments.

§73.4. Operations.

§73.5. Investment in Debt Limitation.

§73.6. Operating Subsidiaries.

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

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

◆ ◆ ◆

14. Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Anticipated Litigation

None

Pending Litigation

None